

OPERATING AGREEMENT

Between

STATE OF CALIFORNIA  
DEPARTMENT OF WATER RESOURCES

And

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THIS AGREEMENT HAS BEEN FILED WITH AND APPROVED BY THE CALIFORNIA PUBLIC UTILITIES COMMISSION ("COMMISSION") FOR USE BETWEEN THE STATE OF CALIFORNIA DEPARTMENT OF WATER RESOURCES ("DWR") AND \_\_\_\_\_ ("UTILITY").

Execution Date: \_\_\_\_\_

Date of Commission Approval: \_\_\_\_\_

Effective Date: \_\_\_\_\_

## **OPERATING AGREEMENT**

This **OPERATING AGREEMENT** (this “Agreement”) is entered into by and between the State of California Department of Water Resources (“DWR”), acting solely under the authority and powers granted by AB1X, codified as Sections 80000 through 80270 of the Water Code, and not under its powers and responsibilities with respect to the State Water Resources Development System, and \_\_\_\_\_, a California corporation (“Utility”). DWR and Utility are sometimes collectively referred to herein as the “Parties” and individually referred to as a “Party.” Unless otherwise noted, all capitalized terms shall have the meanings set forth in Article I of this Agreement.

## **R E C I T A L S**

WHEREAS, under the Act, DWR has entered into a number of long-term power purchase agreements for the purpose of providing the net short requirements to the retail ratepayers of the State's electrical corporations, including Utility; and

WHEREAS, the Contract Allocation Order of the Commission provides that such long-term power purchase agreements are to be operationally allocated among the State's electrical corporations, including Utility; and

WHEREAS, DWR wishes to provide for the administration of certain functions under the Allocated Contracts by Utility solely for the purposes of performing those functions by Utility on behalf of DWR in accordance with such long-term power purchase agreements as provided in this Agreement; and

WHEREAS, consistent with the Contract Allocation Order, DWR will retain legal and financial obligations, together with any other functions not explicitly provided in this Agreement to be performed by Utility, with respect to each of the Allocated Contracts and it is the intent of DWR and the Utility that the provisions of this Agreement will not constitute an “assignment” of the Allocated Contracts as such term is used and as provided in each of the Allocated Contracts; and

[WHEREAS, consistent with the Interim Contract Order of the Commission, DWR expects to enter into certain Interim Contracts prior to January 1, 2003 and DWR wishes to provide for the administration of such Interim Contracts by Utility.]

**NOW, THEREFORE**, in consideration of the mutual obligations of the Parties, the Parties agree as follows:

## **ARTICLE I DEFINITIONS**

Section 1.01. Definitions. The following terms shall have the respective meanings in this Agreement:

The following terms, when used herein (and in the attachments hereto) with initial capitalization, shall have the meaning specified in this Section 1.01. Certain additional terms are defined in the attachments hereto. The singular shall include the plural and the masculine shall include the feminine and neuter, and *vice versa*. “Includes” or “including” shall mean “including without limitation.” References to a section or attachment shall mean a section or attachment of this Agreement, as the case may be, unless the context requires otherwise, and reference to a given agreement or instrument shall be a reference to that agreement or instrument as modified, amended, supplemented or restated through the date as of which such reference is made (except as otherwise specifically provided herein). Unless the context otherwise requires, references to Applicable Laws or Applicable Tariffs shall be deemed references to such laws or tariffs as they may be amended, replaced or restated from time to time. References to the time of day shall be deemed references to such time as measured by prevailing Pacific time.

“Act” means Chapter 4 of Statutes of 2001 (Assembly Bill 1 of the First 2001-02 Extraordinary Session) of the State of California, as amended.

“Agreement” means this Operating Agreement, together with all attached Schedules, Exhibits and Attachments, as such may be amended from time to time as evidenced by a written amendment executed by the Parties.

“Allocated Contracts” means the long-term power purchase agreements operationally allocated to Utility under the Contract Allocation Order, without legal and financial assignment of such agreements to Utility, as provided in Schedule 1 attached hereto.

“Allocated Power” means all power and energy, including the use of such power or energy as ancillary services, delivered or to be delivered under the Contracts.

“Applicable Commission Orders” means such rules, regulations, decisions, opinions or orders as the Commission may lawfully issue or promulgate from time to time, which further define the rights and obligations of the Parties under this Agreement.

“Applicable Law” means the Act, Applicable Commission Orders and any other applicable statute, constitutional provision, rule, regulation, ordinance, order, decision or code of a Governmental Authority.

“Applicable Tariffs” means Utility’s tariffs, including all rules, rates, schedules and preliminary statements, governing electric energy service to Utility’s customers in its service territory, as filed with and approved by the Commission and, if applicable, the Federal Energy Regulatory Commission.

“Assign(s)” shall have the meaning set forth in Section 14.01.

“Bonds” shall have the meaning set forth in the Rate Agreement.

“Bond Charges” shall have the meaning set forth in the Rate Agreement.

“Business Day” means the regular Monday through Friday weekdays which are customary working days, excluding holidays, as established by Applicable Tariffs.

“Commission” means the California Public Utilities Commission.

“Confidential Information” shall have the meaning set forth in Section 11.01(c).

“Contracts” means the Allocated Contracts and the Interim Contracts.

“Contract Allocation Order” means Decision 02-09-053 of the Commission, issued on September 19, 2002, as such Decision may be amended or supplemented from time to time by the Commission.

“Dispatchable Contracts” mean those Allocated Contracts listed on Attachment 3 to Exhibit A hereto and any Interim Contracts which are identified as “dispatchable” contracts on Schedule 2 hereto, including such energy and time limited resources as included in Attachments 5 to Exhibit A hereto.

“DWR Power” shall have the same meaning set forth in the Servicing Arrangement with such amendments to incorporate the Settlement Principles for Remittances and Surplus Revenues as provided in Exhibit C of this Agreement.

“DWR Revenues” means those amounts required to be remitted to DWR by Utility in accordance with this Agreement and as further provided in the Servicing Arrangement.

“Effective Date” means the effective date in accordance with Section 14.13, as such date is set forth on the cover page hereof.

“Fund” means the Department of Water Resources Electric Power Fund established by Section 80200 of the California Water Code.

“Good Utility Practice” means any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice does not require the optimum practice, method, or act to the exclusion of all others, but rather is intended to include acceptable practices, methods, or acts generally accepted in the Western Electric Coordinating Council region.

“Governmental Authority” means any nation or government, any state or other political subdivision thereof, and any entity exercising executive, legislative, judicial,

regulatory or administrative functions of or pertaining to a government, including the Commission.

“Governmental Program” means any program or directive established by Applicable Law which directly or indirectly affects the rights or obligations of the Parties under this Agreement and which obligates or authorizes DWR to make payments or give credits to customers or other third parties under such programs or directives.

“Interim Contract Order” means Decision 02-08-071 of the Commission, issued on August 22, 2002, as such Decision may be amended or supplemented from time to time by the Commission.

“Interim Contracts” mean the power purchase or exchange arrangements between DWR and various Suppliers entered into by DWR at the request of Utility and consistent with the Interim Contract Order, as listed in Schedule 2 attached hereto.

“ISO” means the California Independent System Operator Corporation.

“Must-Take Contracts” mean those Allocated Contracts listed on Attachment 1 to Exhibit A hereto and any Interim Contracts which are identified as “must-take” contracts on Schedule 2 hereto, including such energy and time limited resources as included in Attachments 5 to Exhibit A hereto.

“Power Charges” shall have the meaning set forth in the Rate Agreement.

“Priority Long Term Power Contract” shall have the meaning set forth in the Rate Agreement.

“Rate Agreement” means the Rate Agreement between DWR and the Commission adopted by the Commission on February 21, 2001 in Decision 02-02-051.

“Remittance” means a payment by Utility to DWR or its Assign(s) in accordance with the Servicing Arrangement.

“Servicing Arrangement” means the [Amended and Restated] Servicing [Agreement, dated \_\_\_\_, between DWR and Utility, as amended] / [Order as specified in the Commission Decision 02-05-048 dated May 16, 2002.]

“Supplier” means those certain third parties who are supplying power pursuant to the Contracts.

“Term” means term provided in Section 2.05 hereof.

“URG” means utility-retained generation, including without limitation Utility’s portfolio of generation resources and power purchase agreements prior to or after the Effective Date by Utility.

Section 1.02. Undefined Terms. Capitalized terms not otherwise defined in Section 1.01 herein shall have the meanings set forth in the Act or the Servicing Arrangement.

## **ARTICLE II**

### **OPERATIONAL ALLOCATION OF POWER PURCHASE AGREEMENTS; MANAGEMENT OF THE CONTRACTS; ALLOCATED POWER; TERM**

Section 2.01. Operational Allocation and Management of Power Purchase Agreements. On behalf of DWR, Utility will perform certain day-to-day scheduling and dispatch functions, making surplus energy sales and certain other tasks with respect to the Allocated Contracts, as more fully set forth in this Agreement. The Allocated Contracts which are categorized as Must-Take Contracts are set forth on Attachment 1 to Exhibit A hereto, and Allocated Contracts which are categorized as Dispatchable Contracts are set forth on Attachment 3 to Exhibit A hereto. In addition, Attachments 5 and 6 include energy and time limited resources which may also be included as Must-Take Contracts or Dispatchable Contracts, as the case may be. **Utility shall also perform the same functions with respect to each Interim Contract.**

As further provided in Contract Administration and Performance Test Monitoring Protocols set forth in Exhibit E, DWR will continue to monitor and audit the Supplier performance under the Contracts. Upon development of a mutually agreeable plan, Utility will monitor the performance of Suppliers, as further provided in Exhibit E, subject, however, to DWR's right but not the obligation to audit and monitor all functions contemplated to be performed by Utility, all as further provided in this Agreement.

Section 2.02. Standard of Contract Management. Utility agrees to perform the functions specified in this Agreement relating to the Allocated Contracts **and Interim Contracts** in a reasonable manner, exercising Good Utility Practice. DWR may review or challenge whether such performance complies with this Section 2.02 at any time and take any action with respect thereto as it may deem necessary; provided, however, that Utility shall not be deemed to be in violation of this Section 2.02 unless DWR has elected to challenge an action or inaction by Utility as not being in compliance with this Section 2.02. Utility shall provide to DWR such information specifically provided in Exhibit F hereto to facilitate DWR's verification of Utility's compliance with this Section 2.02. Without waiving DWR's right to review or challenge the Utility's performance as provided in this Section 2.02, DWR shall, upon the request of Utility, provide a certificate to Utility to the effect that, to the best knowledge of DWR based upon information reasonably available to it as of the date of the certificate, Utility is in compliance with this Agreement in all material respects; provided however, that such certificate shall not constitute a just and reasonable review under Section 451 of the Public Utilities Code as provided in Section 80110 of the Water Code unless so stated by DWR.

Section 2.03. Good Faith. Each Party hereby covenants that it shall perform its actions, obligations and duties in connection with this Agreement in good faith.

Section 2.04. DWR Power. During the term of this Agreement, the electric power and energy, including but not limited to capacity, and output, or any of them from the Contracts delivered to retail end-use customers in Utility's service area shall constitute DWR Power for all purposes of the Servicing Arrangement. Utility further agrees to sell and transmit or provide transmission of surplus Allocated Power to third-party purchasers in accordance with the terms of this Agreement.

Section 2.05. Term. The Term of this Agreement shall commence on the Effective Date and shall terminate on the earlier of (a) the termination of the Servicing Arrangement, or (b) the termination of this Agreement by DWR upon ninety days' written notice to Utility, or (c) subject to Section 7.03 hereof, the termination of this Agreement by Utility after an Event of Default by DWR. In addition, this Agreement will terminate as to each Contract that terminates in accordance with its terms. DWR agrees to notify Utility as to the termination of each Contract as provided in Section 5.01(e) hereof.

### **ARTICLE III**

#### **LIMITED AGENCY / NO ASSIGNMENT**

Section 3.01. Limited Agency. Utility is hereby appointed as DWR's agent for the limited purposes set forth in this Agreement. Utility shall not be deemed to be acting, and shall not hold itself out, as agent for DWR for any purpose other than those described in this Agreement. Utility's duties and obligations shall be limited to those duties and obligations that are specified in this Agreement.

Section 3.02. No Assignment. DWR shall remain legally and financially responsible for performance under each of the Contracts and shall retain liability to the counterparty for any failure of Utility to perform the functions referred to in this Agreement on behalf of DWR under such Contracts in accordance with the terms thereof. It is the intent of DWR and Utility that the provisions of this Agreement shall not constitute an "assignment" of the Allocated Contracts as such term is used, and as provided, therein.

### **ARTICLE IV**

#### **LIMITED DUTIES OF UTILITY**

Section 4.01. Limited Duties of Utility as to the Contracts. During the Term of this Agreement, Utility shall, on behalf of DWR:

- (a) Perform the day-to-day scheduling and dispatch functions, including day-ahead, hour-ahead and real time trading, scheduling transactions with all involved parties on behalf of DWR, making surplus energy sales and obtaining relevant information for these functions such as transmission

availability and others, with respect to the Allocated Contracts set forth in Schedule 1 hereto, all as more specifically provided in the Operating Protocols attached hereto as Exhibit A;

- (b) Enter into transactions for the purchase (or sale, as the case may be) of gas, gas transmission services, gas storage services and financial hedges, and perform the operational and administrative responsibilities for such purchases under gas tolling provisions under the Allocated Contracts, including the review of fuel plans and consideration of alternative fuel supply, all as more specifically provided in the Fuel Management Protocols attached hereto as Exhibit B;
- (c) Remit DWR Revenues to DWR, consistent with the Settlement Principles for Remittances and Surplus Revenues attached hereto as Exhibit C and the Servicing Arrangement;
- (d) Assume financial responsibility for the ISO charges listed on Exhibit D attached hereto;
- (e) Upon development of a mutually agreeable plan, monitor the performance of Suppliers under the Allocated Contracts and undertake the administration of the Allocated Contracts, as more specifically provided in the Contract Administration and Performance Monitoring Protocols attached hereto as Exhibit E;
- (f) Provide to DWR the necessary information required by DWR as more specifically provided in the DWR Data Requirements From Utility attached hereto as Exhibit F to facilitate DWR's continued performance of financial obligations related to Allocated Contracts and to facilitate DWR's audit, monitoring and reporting requirements related to the Allocated Contracts;
- (g) At all times in performing its obligations under this Agreement (i) comply with the provisions of each of the Allocated Contracts, (ii) follow Good Utility Practice, (iii) comply with all Applicable Laws and Applicable Commission Orders, and (iv) comply with the applicable principles, guidelines, standards and requirements of FERC, NERC, WECC, a regional transmission operator and the ISO;
- (h) Appoint a primary and secondary contact person, as set forth in Schedule 3 hereto, to coordinate the responsibilities listed in this Section 4.01; and
- (i) Prior to novation of the Interim Contracts by Utility in accordance with the terms of each such Interim Contract, comply with the provisions listed in paragraphs (a) through (h) of this Section 4.01, in each case substituting the defined term Interim Contract(s) for the term Allocated Contract(s).



Provided, however, in the event that DWR fails to provide or provides inaccurate information which results in Utility's non-compliance with its obligations under this Agreement, the resulting non-compliance by Utility shall not constitute an Event of Default under Section 7.01 hereof.

Section 4.02. Dispatch or Sale of Allocated Power. Subject to any existing or new ISO tariff provisions that may affect the dispatch of such Contracts, Allocated Power from all Contracts shall be dispatched or sold, as the case may be, by Utility pursuant to the Operating Protocols attached hereto as Exhibit A.

In the event that any of the Allocated Contracts are re-negotiated so that the arrangement is reasonably determined by DWR to have changed from “must-take” to a “dispatchable” contract or vice versa, then within 30 days of the effectiveness of such re-negotiated Allocated Contract, the Parties agree to enter into an amendment to this Agreement so as to incorporate necessary amendments to the Schedules, Exhibits or Attachments to this Agreement to reflect such changes.

Section 4.03. DWR Revenues. DWR Revenues shall be accounted and remitted to DWR consistent with the principles provided in the Settlement Principles for Remittances and Surplus Revenues attached hereto as Exhibit C and the provisions of the Servicing Arrangement. Unless otherwise specifically provided in this Agreement, Utility will not be required at any time to advance or pay any of its own funds in the fulfillment of its responsibilities under this Agreement.

Section 4.04. Ownership of Allocated Power. Notwithstanding any other provision herein, and in accordance with the Act and Section 80110 of the California Water Code, Utility and DWR agree that DWR shall retain title to all Allocated Power, including DWR Power. In accordance with the Act and Section 80104 of the California Water Code, upon the delivery of Allocated Power to Utility's customers, those customers shall be deemed to have purchased that power from DWR, and payment for such sale shall be a direct obligation of such customer to DWR. In addition, Utility and DWR agree that DWR shall retain title to any surplus Allocated Power sold by Utility on behalf of DWR as provided in this Agreement.

## **ARTICLE V DUTIES OF DWR**

Section 5.01. Duties of DWR. Consistent with the Contract Allocation Order, during the Term of this Agreement, DWR shall:

- (a) Remain legally and financially responsible under each of the Contracts and cooperate with Utility in the transition from DWR to Utility the performance of the functions provided in this Agreement;

- (b) Assume legal and financial responsibility, and enter into or approve Utility's entering into transactions as DWR's agent, for the purchase (or sale, as the case may be) of gas, gas transmission services, gas storage services and financial hedges, and timely consent to or approve the Utility's performance of the operational and administrative responsibilities for such purchases under gas tolling provisions under the Allocated Contracts, including the review of fuel plans and consideration of alternative fuel supply, all as more specifically provided in the Fuel Management Protocols attached hereto as Exhibit B;
- (c) Pay invoices to the Suppliers and perform all necessary settlement functions under the Contracts **and, prior to novation, the Interim Contracts**, in accordance with the terms of the applicable Contracts. In addition, perform all necessary settlement functions related to DWR Revenues, all as more specifically provided in the Settlement Principles for Remittances and Surplus Revenues attached hereto as Exhibit C;
- (d) Until such time as a mutually agreed upon plan may be entered into with Utility, and no earlier than January 1, 2004, continue to monitor the performance of Suppliers and conduct certain contract administration duties under the Allocated Contracts, all as more specifically provided in the Contract Administration and Performance Monitoring Protocols attached hereto as Exhibit E. In addition, continue to perform all other administrative functions related to Contracts not explicitly provided in this Agreement to be performed by Utility on behalf of DWR;
- (e) Upon the termination of any Contract, submit in writing to Utility appropriate Schedules and Attachments to Exhibit A amended to reflect the termination of any Contract. Such amended Schedules and Attachments shall become effective only upon the effective date of the termination of such Contract. Provided, however, rights or obligations of the Parties that arise or relate to Utility's performance of its duties under this Agreement in respect of any terminated Contract shall survive until the expiration of any such right or obligation.
- (f) Appoint a primary and secondary contact person, as set forth in Schedule 3 hereto, to coordinate the responsibilities listed in this Section 5.01.

## ARTICLE VI

### **[RESERVED]/SPECIAL CONTRACT TERMS**

**Section 6.01. Special Contract Terms.** In addition to the obligations set forth in this Agreement, Utility agrees to comply with the terms and provisions applicable to the Interim Contracts as set forth in Schedule 2 hereto.

## **ARTICLE VII EVENTS OF DEFAULT**

Section 7.01. Events of Default. The following events shall constitute “Events of Default” under this Agreement:

(a) any failure by a Party to pay any amount due and payable under this Agreement that continues unremedied for five (5) Business Days after the earlier of the day the defaulting Party receives written notice thereof from the non-defaulting Party; or

(b) any failure by Utility to schedule and dispatch Contracts, consistent with the principles set forth in Exhibit A; or

(c) any failure (except as provided in (a) or (b)) by a Party to duly observe or perform in any material respect any other covenant or agreement of such Party set forth in this Agreement, which failure continues unremedied for a period of 15 calendar days after written notice of such failure has been given to such Party by the non-defaulting Party; or

(d) any material representation or warranty made by a Party shall prove to be false, misleading or incorrect in any material respect as of the date made; or

(e) an Event of Default (as defined under the Servicing Arrangement) shall have occurred and is continuing under the Servicing Arrangement.

Section 7.02. Consequences of Utility Event of Default. Upon any Event of Default by Utility, DWR may, in addition to exercising any other remedies available under this Agreement or under Applicable Law, (i) terminate this Agreement in whole or in part; and (ii) apply to the Commission and, if necessary, any court of competent jurisdiction for sequestration and payment to DWR or its Assign(s) of DWR Revenues or for specific performance of the functions related to the Contracts to be performed by Utility on behalf of DWR as provided in this Agreement.

Section 7.03. Consequences of DWR Event of Default. Upon an Event of Default by DWR (other than an Event of Default under 7.01(a)) and upon DWR’s failure to comply with a final, non-appealable adjudication of the matter relating to such Event of Default by a court of competent jurisdiction, Utility may, in addition to exercising any other remedies available under this Agreement or under Applicable Law, terminate this Agreement in whole or in part.

Section 7.04. Remedies. Subject to Article XIII of this Agreement, upon any Event of Default, the non-defaulting Party may exercise any other legal or equitable right or remedy that may be available to it under applicable law or under this Agreement, including, but not limited to, termination of this Agreement.

Section 7.05. Remedies Cumulative. Except as otherwise provided in this Agreement, all rights of termination, cancellation, or other remedies in this Agreement

are cumulative. Use of any remedy shall not preclude any other remedy available under this Agreement.

Section 7.06. Waivers. None of the provisions of this Agreement shall be considered waived by either Party unless the Party against whom such waiver is claimed gives such waiver in writing. The failure of either Party to insist in any one or more instances upon strict performance of any of the provisions of this Agreement or to take advantage of any of its rights hereunder shall not be construed as a waiver of any such provisions or the relinquishment of any such rights for the future, but the same shall continue and remain in full force and effect. Waiver by either Party of any default by the other Party shall not be deemed a waiver of any other default.

## **ARTICLE VIII PAYMENT OF FEES AND CHARGES**

Section 8.01. Utility Fees and Charges. As noted in the Contract Allocation Order, the details of the amount and recovery of administrative costs to Utility associated with the Contracts are expected to be considered in another Commission proceeding. As such, the Parties agree that the administrative costs to Utility will be recovered pursuant to such Commission proceeding. Provided, however, that Utility will determine charges and fees reasonably incurred to implement the Contract Allocation Order and Utility's duties under this Agreement. Utility shall enter the cost of such fees and charges in its Purchased Electric Commodity Account, or its successor or another account designated by the Commission on current basis, subject to subsequent Commission review.

## **ARTICLE IX REPRESENTATIONS AND WARRANTIES**

Section 9.01. Representations and Warranties.

(a) Each person executing this Agreement for the respective Parties expressly represents and warrants that he or she has authority to bind the Party on whose behalf he or she has executed this Agreement.

(b) Each Party represents and warrants that it has the full power and authority to execute and deliver this Agreement and to perform its terms, that execution, delivery and performance of this Agreement have been duly authorized by all necessary corporate or other action by such Party, and that this Agreement constitutes such Party's legal, valid and binding obligation, enforceable against such Party in accordance with its terms.

(c) DWR represents and warrants that all necessary and appropriate notices, inducements, undertakings, approvals, and consents have been obtained from each Supplier to the Contract allocated to Utility in order for Utility to undertake its duties set forth in this Agreement in a timely and appropriate fashion.

## **ARTICLE X LIMITATIONS ON LIABILITY**

Section 10.01. Consequential Damages. In no event will either Party be liable to the other Party for any indirect, special, exemplary, incidental, punitive, or consequential damages under any theory. Nothing in this Section 10.01 shall limit either Party's rights as provided in Article VII above.

Section 10.02. Limited Obligations of DWR and Utility. Any amounts payable by DWR under this Agreement shall be payable solely from moneys on deposit in the Department of Water Resources Electric Power Fund established pursuant to Section 80200 of the California Water Code (the "Fund").

Section 10.03. Sources of Payment; No Debt of State. DWR's obligation to make payments hereunder shall be limited solely to the Fund and shall be payable as an operating expense of the Fund solely from Power Charges subject and subordinate to each Priority Long Term Power Contract in accordance with the priorities and limitations established with respect to the Fund's operating expenses in any indenture providing for the issuance of Bonds and in the Rate Agreement and in the Priority Long Term Contracts. Any liability of DWR arising in connection with this Agreement or any claim based thereon or with respect thereto, including, but not limited to, any payment arising as the result of any breach or Event of Default under this Agreement, and any other payment obligation or liability of or judgment against DWR hereunder, shall be satisfied solely from the Fund. NEITHER THE FULL FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE OF CALIFORNIA ARE OR MAY BE PLEDGED FOR ANY PAYMENT UNDER THIS AGREEMENT. Revenues and assets of the State Water Resources Development System, and Bond Charges under the Rate Agreement, shall not be liable for or available to make any payments or satisfy any obligation arising under this Agreement. If moneys on deposit in the Fund are insufficient to pay all amounts payable by DWR under this Agreement, or if DWR has reason to believe such funds may become insufficient to pay all amounts payable by DWR under this Agreement, DWR shall diligently pursue an increase to its revenue requirements as permitted under the Act from the appropriate Governmental Authority as soon as practicable.

## **ARTICLE XI CONFIDENTIALITY**

Section 11.01. Proprietary Information.

(a) Nothing in this Agreement shall affect Utility's obligations to observe any Applicable Law prohibiting the disclosure of Confidential Information regarding its customers.

(b) Nothing in this Agreement, and in particular nothing in Sections 11.01(e)(x) through 11.01(e)(z) of this Agreement, shall affect the rights of the Commission to obtain from Utility, pursuant to Applicable Law, information requested by the Commission, including Confidential Information provided by DWR to Utility. Applicable Law, and not this Agreement, will govern what information the Commission

may disclose to third parties, subject to any confidentiality agreement between DWR and the Commission.

(c) The Parties acknowledge that each Party may acquire information and material that is the other Party's confidential, proprietary or trade secret information. As used herein, "Confidential Information" means any and all technical, commercial, financial and customer information disclosed by one Party to the other (or obtained from one Party's inspection of the other Party's records or documents), including any patents, patent applications, copyrights, trade secrets and proprietary information, techniques, sketches, drawings, maps, reports, specifications, designs, records, data, models, inventions, know-how, processes, apparatus, equipment, algorithms, software programs, software source documents, object code, source code, and information related to the current, future and proposed products and services of each of the Parties, and includes, without limitation, the Parties' respective information concerning research, experimental work, development, design details and specifications, engineering, financial information, procurement requirements, purchasing, manufacturing, business forecasts, sales and merchandising, and marketing plans and information. In all cases, Confidential Information includes proprietary or confidential information of any third party disclosing such information to either Party in the course of such third party's business or relationship with such Party. Utility's Confidential Information also includes any and all lists of customers, and any and all information about customers, both individually and aggregated, including but not limited to customers' names, street addresses of customer residences and/or facilities, email addresses, identification numbers, Utility account numbers and passwords, payment histories, energy usage, rate schedule history, allocation of energy uses among customer residences and/or facilities, and usage of DWR Power. All Confidential Information disclosed by the disclosing Party ("Discloser") will be considered Confidential Information by the receiving Party ("Recipient") if identified as confidential and received from Discloser.

(d) Each Party agrees to take all steps reasonably necessary to hold in trust and confidence the other Party's Confidential Information. Without limiting the generality of the immediately preceding sentence, each Party agrees (i) to hold the other Party's Confidential Information in strict confidence, not to disclose it to third parties or to use it in any way, commercially or otherwise, other than as permitted under this Agreement; and (ii) to limit the disclosure of the Confidential Information to those of its employees, agents or directly related subcontractors with a need to know who have been advised of the confidential nature thereof and who have acknowledged their express obligation to maintain such confidentiality. DWR shall not disclose Confidential Information to employees, agents or subcontractors that are in any respect responsible for power marketing or trading activities associated with the State Water Resources Development System.

(e) The foregoing two paragraphs will not apply to any item of Confidential Information if: (i) it has been published or is otherwise readily available to the public other than by a breach of this Agreement; (ii) it has been rightfully received by Recipient from a third party without breach of confidentiality obligations of such third party and outside the context of the provision of services under this Agreement; (iii) it has been



independently developed by Recipient personnel having no access to the Confidential Information; (iv) it was known to Recipient prior to its first receipt from Discloser, or (v) it has been summarized, processed and incorporated for incorporation into reports, discussions, statements or any other further work product. In addition, Recipient may disclose Confidential Information if and to the extent required by law or a Governmental Authority, provided that (x) Recipient shall give Discloser a reasonable opportunity to review and object to the disclosure of such Confidential Information, (y) Discloser may seek a protective order or confidential treatment of such Confidential Information, and (z) Recipient shall make commercially reasonable efforts to cooperate with Discloser in seeking such protective order or confidential treatment. Discloser shall pay Recipient its reasonable costs of cooperating.

Section 11.02. No License. Nothing contained in this Agreement shall be construed as granting to a Party a license, either express or implied, under any patent, copyright, trademark, service mark, trade dress or other intellectual property right, or to any Confidential Information now or hereafter owned, obtained, controlled by, or which is or may be licensable by, the other Party.

Section 11.03. Survival of Provisions. The provisions of this Article XI shall survive the termination of this Agreement.

## **ARTICLE XII**

### **RECORDS AND AUDIT RIGHTS**

Section 12.01. Records. Utility shall maintain accurate records and accounts relating to the Contracts in sufficient detail to permit DWR to audit and monitor the functions related to the Allocated Contracts to be performed by Utility on behalf of DWR, as contemplated under this Agreement. In addition, Utility shall maintain accurate records and accounts relating to DWR Revenues to be remitted by Utility to DWR, consistent with the Settlement Principles for Remittances and Surplus Revenues set forth in Exhibit C hereto. Utility shall provide to DWR and its Assign(s) access to such records. Access shall be afforded without charge, upon reasonable request made pursuant to Section 12.02. Access shall be afforded only during Business Hours and in such a manner so as not to interfere unreasonably with Utility's normal operations. Utility shall not treat DWR Revenues as income or assets of Utility or any affiliate for any tax, financial reporting or regulatory purposes, and the financial books or records of Utility and affiliates shall be maintained in a manner consistent with the absolute ownership of DWR Revenues by DWR and Utility's holding of DWR Revenues in trust for DWR (whether or not held together with other monies).

Section 12.02. Audit Rights.

(a) Upon 30 calendar days' prior written notice, DWR may request an audit, conducted by DWR or its agents (at DWR's expense), of Utility's records and procedures, which shall be limited to records and procedures containing information bearing upon Utility's performance of its obligations under this Agreement; and such

other matters as DWR or its Assign(s) may reasonably request. The audit shall be conducted during Business Hours without interference with Utility's normal operations, and in compliance with Utility's security procedures.

(b) As provided in the Act, the State of California Bureau of State Audits (the "Bureau") shall conduct a financial and performance audit of DWR's implementation of Division 27 (commencing with Section 80000) of the California Water Code, and the Bureau shall issue a final report on or before March 31, 2003. In addition, as provided in Section 8546.7 of the California Government Code, Utility agrees that, pursuant to this Section 12.02, DWR or the State of California Department of General Services, the Bureau, or their designated representative ("DWR's Agent") shall have the right to review and to copy (at DWR's expense) any non-confidential records and supporting documentation pertaining to the performance of this Agreement and to conduct an on-site review of any Confidential Information pursuant to Section 12.03 hereof. Utility agrees to maintain such records for such possible audit for three years after final Remittance to DWR. Utility agrees to allow such auditor(s) access to such records during Business Hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Utility agrees to include a similar right for DWR or DWR's Agent to audit records and interview staff in any contract between Utility and a subcontractor directly related to performance of this Agreement.

Section 12.03. Confidentiality. Materials reviewed by either Party or its agents in the course of an audit may contain Confidential Information subject to Article XI above. The use of all materials provided to DWR or Utility or their agents, as the case may be pursuant to this Article XII, shall comply with the provisions in Article XI and shall be limited to use in conjunction with the conduct of the audit and preparation of a report for appropriate distribution of the results of the audit consistent with Applicable Law.

Section 12.04. Annual Certifications. At least annually, and in no event later than the tenth Business Day after the end of the calendar year, Utility shall deliver to DWR a certificate of an authorized representative certifying that to the best of such representative's knowledge, after a review of Utility's performance under this Agreement, Utility has fulfilled its obligations under this Agreement in all material respects and is in compliance herewith in all material respects.

Section 12.05. Additional Applicable Laws. Each Party shall make an effort to promptly notify the other Party in writing to the extent such Party becomes aware of any new Applicable Laws or changes (or proposed changes) in Applicable Tariffs hereafter enacted, adopted or promulgated that may have a material adverse effect on either Party's ability to perform its duties under this Agreement. A Party's failure to so notify the other Party pursuant to this Section 12.05 will not constitute a material breach of this Agreement, and will not give rise to any right to terminate this Agreement or cause either Party to incur any liability to the other Party or any third party.

Section 12.06. Other Information. Upon the reasonable request of DWR or its Assign(s), Utility shall provide to DWR or its Assign(s) any public financial information in respect of Utility applicable to services provided by Utility under this Agreement, or



any material information regarding the sale of Allocated Power, to the extent such information is reasonably available to Utility, which (i) is reasonably necessary and permitted by Applicable Law to monitor the performance by Utility hereunder, or (ii) otherwise relates to the exercise of DWR's rights or the discharge of DWR's duties under this Agreement or any Applicable Law. In particular, but without limiting the foregoing, Utility shall provide to DWR any such information that is necessary or useful to calculate DWR's revenue requirements (as described in Sections 80110 and 80134 of the California Water Code).

Section 12.07. Data and Information Retention. All data and information associated with the provision and receipt of services pursuant to this Agreement shall be maintained for the greater of (a) the retention time required by Applicable Law or Applicable Tariffs for maintaining such information, or (b) three (3) years.

### **ARTICLE XIII DISPUTE RESOLUTION**

Section 13.01. Dispute Resolution. Should any dispute arise between the Parties or should any dispute between the Parties arise from the exercise of either Party's audit rights contained in Section 12.02 hereof, the Parties shall remit any undisputed amounts and agree to enter into good faith negotiations as soon as practicable to resolve such disputes within (10) Business Days so as to resolve such disputes, as appropriate, within the timeframes provided under this Agreement, or as soon as possible thereafter. For any disputed Remittances, if such resolution cannot be made before the remittance date, Utility shall remit the undisputed portion to DWR. In addition, the disputed portion of the Remittances shall be deposited into an escrow account held by a qualified, independent escrow holder. Upon resolution of such disputes, the Party that escrowed the disputed amount shall reimburse the other Party from the escrow account as necessary.

Section 13.02. ISO Settlements Disputes. Utility shall review, validate and verify all ISO charges/credits contained on all ISO settlement statements, including any charges/credits resulting from the administrative functions related to the Contracts. Utility shall inform DWR of any discrepancies and shall dispute any such discrepancies with the ISO in accordance with the ISO's tariff and protocols. Except as provided in Section 13.03, if any ISO charge type settlement amount appearing on a Preliminary or Final Settlement Statement (as defined in the ISO tariff) resulting or relating to the Utility's performance of functions related to the Contracts under this Agreement is in dispute, it shall be the responsibility of Utility, on behalf of DWR, to seek resolution of said dispute through the ISO dispute resolution process as provided in the ISO's tariff.

For disputes affecting Utility's Remittances to DWR, including disputes on ISO charges to non-DWR parties that would affect Remittances to DWR, Utility shall provide to DWR: a) notification of submission of the dispute through the ISO dispute resolution process, identifying, among other items, the dispute type, quantity, price and allocation; b) a copy of the submitted dispute and all supporting data; and c) a copy of all ensuing documentation resulting from the ongoing dispute resolution process. Utility shall track and validate all disputed ISO charges involving any financial responsibility of DWR.

Section 13.03. Supplier Invoice Disputes - DWR shall continue to be responsible for all dispute resolution relating to Supplier invoices. In addition, except as specifically provided in Exhibit E of this Agreement, all other contract administration functions shall remain DWR's responsibility.

Section 13.04. Good-Faith Negotiations. Should any dispute arise between the Parties relating to this Agreement, the Parties shall undertake good-faith negotiations to resolve such dispute. If the Parties are unable to resolve such dispute through good-faith negotiations, either Party may submit a detailed written summary of the dispute to the other Party. Upon such written presentation, each Party shall designate an executive with authority to resolve the matter in dispute. If the Parties are unable to resolve such dispute within 30 days from the date that a detailed summary of such dispute is presented in writing to the other Party, then either Party may, at its sole discretion, submit the dispute to the Commission for final resolution.

Section 13.05. Costs. Each Party shall bear its own respective costs and attorney fees in connection with respect to any dispute resolution process undertaken by it pursuant to this Article. Provided, however, DWR shall reimburse Utility all reasonably incurred costs, including, but not limited to, in-house and retained attorneys, consultants, witnesses, and arbitration costs, arising from or pertaining to all disputes relating to ISO charges/credits contained on all ISO settlement statements resulting from the operational, dispatch and administrative functions related to the Contracts performed by Utility on behalf of DWR pursuant to the standards set forth in Section 2.02 herein and consistent with the provisions of the ISO tariff, as may be amended from time to time, including disputes on ISO charges to non-DWR parties that would affect Remittances to DWR. These costs shall be recorded and invoiced in the manner set forth in Section 8.01 hereof; provided, if such costs are reimbursed by DWR to Utility, then such costs shall not be included by Utility for recovery under the process contemplated under Section 8.01 hereof.

## **ARTICLE XIV MISCELLANEOUS**

Section 14.01. Assignment. (a) Except as provided in paragraphs (b) and (c) below, neither Party shall assign or otherwise dispose of this Agreement, its right, title or interest herein or any part hereof to any entity, without the prior written consent of the other Party, and as related to Utility, without the approval and or review of the Commission. No assignment of this Agreement shall relieve the assigning Party of any of its obligations under this Agreement until such obligations have been assumed by the assignee. When duly assigned in accordance with this Section 14.01(a) and when accepted by the assignee, this Agreement shall be binding upon and shall inure to the benefit of the assignee. Any assignment in violation of this Section 14.01(a) shall be void.

(b) Utility acknowledges and agrees that DWR may assign or pledge its rights to receive performance hereunder to a trustee or another party ("Assign(s)") in order to secure DWR's obligations under its bonds (as that term is defined in the Act), and any

such Assign shall be a third party beneficiary of this Agreement; provided, however, that this authority to assign or pledge rights to receive performance hereunder shall in no event extend to any person or entity that sells power or other goods or services to DWR.

(c) Any person (i) into which Utility may be merged or consolidated, (ii) which may result from any merger or consolidation to which Utility shall be a party or (iii) which may succeed to the properties and assets of Utility substantially as a whole, which person in any of the foregoing cases executes an agreement of assumption to perform every obligation of Utility hereunder, shall be the successor to Utility under this Agreement without further act on the part of any of the Parties to this Agreement; provided, however, that Utility shall have delivered to DWR and its Assign(s) an opinion of counsel reasonably acceptable to DWR stating that such consolidation, merger or succession and such agreement of assumption complies with this Section 13.01(c) and that all of Utility's obligations hereunder have been validly assumed and are binding on any such successor or assign.

(d) Notwithstanding anything to the contrary herein, DWR's rights and obligations hereunder shall be transferred, without any action or consent of either Party hereto, to any entity created by the State legislature which is required under Applicable Law to assume the rights and obligations of DWR under Division 27 of the California Water Code.

Section 14.02. Force Majeure. Neither Party shall be liable for any delay or failure in performance of any part of this Agreement (including the obligation to remit money at the times specified herein) from any cause beyond its reasonable control, including but not limited to, unusually severe weather, flood, fire, lightning, epidemic, quarantine restriction, war, sabotage, act of a public enemy, earthquake, insurrection, riot, civil disturbance, strike, restraint by court order or Government Authority, or any combination of these causes, which by the exercise of due diligence and foresight such Party could not reasonably have been expected to avoid and which by the exercise of due diligence is unable to overcome.

Section 14.03. Severability. In the event that any one or more of the provisions of this Agreement shall for any reason be held to be unenforceable in any respect under applicable law, such unenforceability shall not affect any other provision of this Agreement, but this Agreement shall be construed as if such unenforceable provision or provisions had never been contained herein.

Section 14.04. Survival of Payment Obligations. Upon termination of this Agreement, each Party shall remain liable to the other Party for all amounts owing under this Agreement. Utility shall continue to collect and remit, pursuant to the terms of the Servicing Arrangement and the principles provided in the Settlement Principles for Remittances and Surplus Revenues provided in Exhibit C hereto and any DWR Charges billed to customers or any DWR Surplus Energy Sales Revenues attributable to sales entered into before the effective date of termination of the Servicing Arrangement.

Section 14.05. Third-Party Beneficiaries. The provisions of this Agreement are exclusively for the benefit of the Parties and any permitted assignee of either Party.

Section 14.06. Governing Law. This Agreement shall be interpreted, governed and construed under the laws of the State of California without regard to choice of law provisions.

Section 14.07. Multiple Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original.

Section 14.08. Section Headings. Section and paragraph headings appearing in this Agreement are inserted for convenience only and shall not be construed as interpretations of text.

Section 14.09. Amendments. No amendment, modification, or supplement to this Agreement shall be effective unless it is in writing and signed by the authorized representatives of both Parties and approved as required, and by reference incorporates this Agreement and identifies the specific portions that are amended, modified, or supplemented or indicates that the material is new. No oral understanding or agreement not incorporated in this Agreement is binding on either of the Parties.

Section 14.10. Amendment Upon Changed Circumstances. The Parties acknowledge that compliance with any Commission decision, legislative action or other governmental action (whether issued before or after the Effective Date of this Agreement) affecting the operation of this Agreement, including but not limited to (i) dissolution of the ISO, (ii) changes in the ISO market structure, (iii) a decision regarding direct access currently pending before the Commission, (iv) the establishment of other Governmental Programs, or (v) a modification to the Contract Allocation Order may require that amendment(s) be made to this Agreement. The Parties therefore agree that if either Party reasonably determines that such a decision or action would materially affect the services to be provided hereunder or the reasonable costs thereof, then upon the issuance of such decision or the approval of such action (unless and until it is stayed), the Parties will negotiate the amendment(s) to this Agreement that is (or are) appropriate in order to effectuate the required changes in services to be provided or the reimbursement thereof. If the Parties are unable to reach agreement on such amendments within 60 days after the issuance of such decision or approval of such action, either Party may, in the exercise of its sole discretion, submit the disagreement to the Commission for proposed resolution, in accordance with Applicable Law. Nothing herein shall preclude either Party from challenging the decision or action which such Party deems may adversely affect its interests in any appropriate forum of the Party's choosing.

The Parties agree that, if the rating agencies request changes to this Agreement which the Parties reasonably determine are necessary and appropriate, the Parties will negotiate in good faith, but will be under no obligation to reach agreement, to amend this Agreement to accommodate the rating agency requests and will cooperate in obtaining any required approvals of the Commission or other entities for such amendments.

Section 14.11 Indemnification.

(a) Indemnification of DWR. Utility (the “Indemnitor”) shall at all times protect, indemnify, defend and hold harmless DWR, and its elected officials, appointed officers, employees, representatives, agents and contractors (each, an “Indemnified Party” or an “Indemnitee”) from and against (and pay the full amount of) any and all claims (whether in tort, contract or otherwise), demands, expenses (including, without limitation, in-house and retained attorneys’ fees) and liabilities for losses, damage, injury and liability of every kind and nature and however caused, and taxes (of any kind and by whomsoever imposed), to third parties arising from or in connection with (or alleged to arise from in connection with): (1) any failure by Utility to perform its material obligations under this Agreement; (2) any material representation or warranty made by Utility shall prove to be false, misleading or incorrect in any material respect as of the date made; (3) the gross negligence or willful misconduct of Utility or any of its officers, directors, employees, agents, representatives, subcontractors or assignees in connection with this Agreement; and (4) any violation of or failure by Utility or Indemnitor to comply with any Applicable Commission Orders or Applicable Law; provided, however, that the foregoing indemnifications and protections shall not extend to any losses arising from gross negligence or willful misconduct of any Indemnified Party.

(b) Obligation of Utility. Consistent with the Contract Allocation Order, Utility shall not, in acting as limited agent of DWR hereunder be required to perform any obligations of any Supplier under any Allocated Contract or to make any payments on behalf of such Supplier or as the result of the failure of such Supplier to perform under any Allocated Contract.

(c) Indemnification of Utility. To the extent permitted by law, DWR (“Indemnitor”) shall at all times protect, indemnify, defend and hold harmless Utility, and its officers, employees, representatives, agents and contractors (each, an “Indemnified Party” or “Indemnitee”), from and against (and pay the full amount of) any and all claims (whether in tort, contract or otherwise), demands, expenses (including, without limitation, in-house and retained attorneys’ fees) and liabilities for losses, damage, injury and liability of every kind and nature and however caused, and taxes (of any kind and by whomsoever imposed), to third parties arising from or in connection with (or alleged to arise from on in connection with): (1) any failure by DWR to perform its material obligations under this Agreement or any Allocated Contract **and, prior to novation, any Interim Contract**; (2) any material representation or warranty made by DWR shall prove to be false, misleading or incorrect in any material respect as of the date made; (3) the gross negligence or willful misconduct of the DWR or any of its officers, directors or employees, agents, representatives, subcontractors or assignees in connection with this Agreement; (4) any action claiming Utility failed to perform any Supplier's obligations under an Allocated Contract; and (5) any violation of or failure by DWR or Indemnitor to comply with any Applicable Law; and provided, however, that the foregoing indemnifications and protections shall not extend to any losses arising from the gross negligence or willful misconduct of any Indemnified Party.

(d) Indemnification Procedures. Indemnatee shall promptly give notice to Indemnitor of any claim or action to which it seeks indemnification from Indemnitor. Indemnitor shall defend any such claim or action brought against it, and may also defend such claim or action on behalf of the Indemnatee (with counsel reasonably satisfactory to Indemnitor) unless there is any actual or potential conflict between Indemnitor and Indemnatee with respect to such claim or action. If there is any actual or potential conflict between Indemnitor and Indemnatee with respect to such claim or action, Indemnatee shall have the opportunity to assume (at Indemnitor's expense) defense of any claim or action brought against Indemnatee by a third party; however, failure by Indemnatee to request defense of such claim or action by the Indemnitor shall not affect Indemnatee's right to indemnity under this Section 14.11. In any action or claim involving Indemnatee, Indemnitor shall not settle or compromise any claim without the prior written consent of Indemnatee.

Section 14.12. Notices and Demands. (a) Except as otherwise provided under this Agreement, all notices, demands, or requests pertaining to this Agreement shall be in writing and shall be deemed to have been given (i) on the date delivered in person, (ii) on the date when sent by facsimile (with receipt confirmed by telephone by the intended recipient or his or her authorized representative) or electronic transmission (with receipt confirmed telephonically or electronically by the intended recipient or his or her authorized representative) or by special messenger, or (iii) 72 hours following delivery to a United States post office when sent by certified or registered United States mail postage prepaid, and addressed as set forth below:

Utility:

DWR: State of California  
The Resources Agency  
Department of Water Resources  
California Energy Resources Scheduling Division  
3310 El Camino Avenue, Suite 120  
Sacramento, California 95821

Attn: Peter S. Garriss  
Deputy Director  
Telephone: (916) 574-2733  
Facsimile: (916) 574-0301  
Email: [pgarris@water.ca.gov](mailto:pgarris@water.ca.gov)

(b) Each Party shall be entitled to specify as its proper address any other address in the United States, or specify any change to the above information, upon written notice to the other Party complying with this Section 14.12.



(c) Each Party shall designate on Attachment A the person(s) to be contacted with respect to specific operational matters. Each Party shall be entitled to specify any change to such person(s) upon written notice to the other Party complying with this Section 14.12.

Section 14.13. Approval. This Agreement shall be effective when it has been executed by both Parties and approved by the Commission. Except as expressly provided otherwise herein, neither Party may commence performance hereunder until such date. Any delay in the commencement of performance hereunder as a consequence of waiting for such approval(s) shall not be a breach or default under this Agreement.

Section 14.14. Government Code and Public Contract Code Inapplicable. DWR has determined, pursuant to Section 80014(b) of the California Water Code, that application of certain provisions of the Government Code and Public Contract Code applicable to State contracts, including but not limited to advertising and competitive bidding requirements and prompt payment requirements, would be detrimental to accomplishing the purposes of Division 27 (commencing with Section 80000) of the California Water Code and that such provisions and requirements are therefore not applicable to or incorporated in this Agreement.

**IN WITNESS WHEREOF, the Parties have executed this Agreement on the date or dates indicated below, to be effective as of the Effective Date.**

**CALIFORNIA STATE DEPARTMENT  
OF WATER RESOURCES**, acting solely under  
the authority and powers granted by AB1X,  
codified as Sections 80000 through 80270 of the  
Water Code, and not under its powers and  
responsibilities with respect to the State Water  
Resources Development System

**[UTILITY]**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_



Schedule 1

**ALLOCATED CONTRACTS**

[Schedule 2

**INTERIM CONTRACTS]**

Schedule 3

**REPRESENTATIVES AND CONTACTS**

## EXHIBIT A

### OPERATING PROTOCOLS

Pursuant to Section 4.01 of this Agreement, Utility shall perform the day-to-day scheduling and dispatch functions, including day-ahead, hour-ahead and real-time trading, scheduling of transactions with all involved parties on behalf of DWR, making surplus energy sales and obtaining relevant information for these functions such as transmission availability and others, with respect to the Allocated Contracts set forth in Schedule 1 hereto, all as more specifically provided below and in compliance with the provisions of each of the Contracts:

- I. Resource Commitment and Dispatch. Utility agrees to use good faith efforts to dispatch Allocated Contracts and, prior to novation, Interim Contracts, based on the principle of “least cost dispatch” to retail customers, consistent with the Contract Allocation Order and other Applicable Commission Orders.
  - A. Annual and Quarterly Load and Resource Assessment Studies. Utility shall provide to DWR copies of its annual and quarterly load and resource assessment studies. Provided that Utility submits substantially the same information to the Commission, copies of the Commission submission will be simultaneously sent to DWR to satisfy requirements of this section.
  - B. Resource Categorization. The Allocated Contracts, Interim Contracts and URG resources have been divided into the following categories:
    1. Must Take Resources. The must-take resources included in Utility’s integrated portfolio consist of URG and the Must-Take Contracts. A list of the Must-Take Contracts is provided in Attachment 1 to Exhibit A of this Agreement. A list of the must-take resources within URG is set forth in Attachment 2 to this Exhibit A.
    2. Dispatchable Resources. The dispatchable resources included in Utility’s integrated portfolio consist of URG and the Dispatchable Contracts. A list of the Dispatchable Contracts is provided in Attachment 3 to Exhibit A of this Agreement. A list of the dispatchable resources within URG is set forth in Attachment 4 to this Exhibit A.
    3. Energy and Time Limited Resources. The energy and time limited resources include certain of the Allocated Contracts (e.g. peakers), the Interim Contracts and certain of the URG resources (e.g. hydro). A list of the energy and time limited resources included in the Allocated Contracts and Interim Contracts are provided in Attachment 5 to Exhibit A of this Agreement. A list of the energy

and time limited resources included in URG is set forth in Attachment 6 to this Exhibit A. Some energy and time limited resources, such as hydro, are also “must-take” resources and their listing on Attachments 5 and 6 does not exclude these resources from being classified as “must-take” for purposes of this Agreement.

4. Annual Updates. Utility shall on January 1 of each calendar year update the description of resources set forth in Attachments one through six of Exhibit A. Utility will advise DWR in a timely manner if major units/contracts are acquired or retired/mature.

C. Scheduling Protocols.

1. DWR is responsible for notifying the counter-party to each of the Allocated Contracts that scheduling under the Allocated Contracts will be performed by Utility before the first day that schedules are due to be submitted by Utility. DWR is responsible for notifying Utility of any changes to the Allocated Contracts that it has negotiated, including changes to the scheduling terms. DWR agrees to provide such notice as soon as possible following the negotiation of any changed provisions and in any case prior to the time that any changed provisions become effective.

To the extent that any of the Interim Contracts are amended or modified by DWR or Utility, including changes to the scheduling terms, DWR and Utility agree to provide such notice to the other Party as soon as possible following the negotiation of any changed provisions and in any case prior to the time that any such changes provisions become effective.

2. Utility agrees to schedule Contracts in accordance with their terms and in accordance with the requirements of the Control Area operator or operators with whom the Contract must be scheduled to provide for power delivery.

- II. ISO Ancillary Service (AS) Market. Among the Contracts are resources that are or may be qualified to be bid into the ISO’s Ancillary Services (“AS”) market or that Utility may use in its self-provision of AS. Utility is authorized to develop protocols and procedures for the use of DWR resources for AS, subject to approval by DWR. To the extent Utility elects to schedule a Contract into the ISO’s AS market or to use such Contract in its self-provision of AS, DWR may request Utility to explain how such election was consistent with an appropriate balance between least cost dispatch principles, optimization of hydro resources and satisfaction of system operator or other applicable reliability requirements.

III. Surplus Energy Sales and Energy Exchanges

- A. Over-generation. In an over-generation situation (i.e., a condition where must take resources are in excess of retail load, wholesale load and available surplus sales and it is necessary to physically back-down must-take resources), or an anticipated or projected over-generation situation, Utility will determine which must-take resource should back down in accordance with the ISO tariff, Good Utility Practice and Utility's back-down protocols, provided such back-down protocols have been provided to DWR and DWR has not objected to them. In the event DWR objects to Utility's back-down protocols, any disputes shall be submitted to Commission for resolution. In order to reduce the need for physical curtailment in over-generation situations, DWR and Utility shall develop pay for curtailment protocols and procedures that will enable Utility to instruct a must-take resource not to deliver energy under specified conditions. The costs and charges associated with mitigation of an over-generation situation shall be allocated among the parties on a pro-rata basis consistent with the surplus sales allocation principles set forth in Exhibit C.
- B. Energy Exchange Arrangements. Existing non-DWR/CERS exchanges and those that might be transacted post-2002, will be considered URG exchanges. The accounting of energy necessary to support energy exchanges is addressed in Exhibit C.
- C. Surplus Energy Sales Arrangement. Utility will not enter into any forward energy surplus sales transactions of Contracts extending beyond thirty (30) days without pre-approval from DWR. Requests for pre-approval from DWR shall be made in writing during regular business hours with an adequate description of the proposal, including Utility's resource and cost effectiveness analysis. For all other proposed sales in excess of thirty (30) days, DWR shall respond to such requests in two (2) business days. For sales less than thirty (30) days in duration, Utility shall on a monthly basis and updated weekly basis prepare a sales plan addressing balance of month, weekly, balance of week and other short-term sales and such proposed sales plan shall be subject to DWR review and approval. Once DWR has approved a sales plan, DWR will develop the appropriate procedures and criteria for the processing of such requests and sales plans. To the extent there is surplus power uncommitted to a forward energy surplus sales transaction or the Parties are unable to agree on a sales plan for such energy, Utility shall be required to sell such surplus energy in the day-ahead, hour-ahead or real-time market. Utility shall arrange for transmission service to accommodate surplus sales to the extent that transmission service is available and cost effective. The costs of transmission service and the costs of firm transmission rights associated with such surplus energy sales transactions shall be treated in accordance

with the Settlement Principles for Remittances and Surplus Revenues attached hereto as Exhibit C. For surplus energy sales to third parties, Utility shall apply prudent credit risk management criteria to ensure that such purchasers meet or exceed DWR credit criteria, then consistent with industry accepted credit standards. If Utility sells surplus Power to an entity that requires collateral, the cost and obligation to post such collateral shall be Utility's responsibility.

- IV. Daily Information. On a daily basis, Utility shall transmit to DWR a copy of its day-ahead and hour-ahead schedules submitted to the ISO. Utility shall remit DWR Revenues to DWR for each transaction day consistent with the Settlement Principles for Remittances and Surplus Revenues set forth in Exhibit C hereto and the provisions of the Servicing Arrangement.
- V. Outage Coordination and Determination of Resource Availability of Contracts. Utility shall communicate with the SC of each Contract to coordinate, approve, document and report planned Contract outages. For those Contracts where resource availability affects capacity payments, Utility will use good faith efforts to verify supplier actual resource availability, and keep records of resource availability as reported by Seller. In addition, Utility shall document all outages (forced and planned) and notices of outages and provide such documents to DWR within five (5) business days after the end of each calendar month.
- VI. Interim Contracts. Utility and DWR agree that the Attachments and data requirements associated with this Agreement shall be updated as needed to incorporate the addition of new Interim Contracts entered into after the execution date of this Agreement.

**Attachment 1 to Exhibit A**

**Must-Take Resources -Contracts**

**Attachment 2 to Exhibit A**

**Must-Take Resources - URG**

**Attachment 3 to Exhibit A**

**Dispatchable Resources - Contracts**



**Attachment 4 to Exhibit A**

**Dispatchable Resources - URG**

**Attachment 5 to Exhibit A**

**Energy and Time Limited Resources - Contracts**

**Attachment 6 to Exhibit A**

**Energy and Time Limited Resources - URG**

## **EXHIBIT B**

### **FUEL MANAGEMENT PROTOCOLS**

Certain of the Contracts listed on Schedule 1 of this Agreement provide DWR the option of either (i) letting the Supplier supply the necessary natural gas for its generating units at an index-based price or agreed upon fixed price or (ii) DWR contracting for the gas supply and causing such supply to be delivered to the Supplier under a tolling arrangement (“Fuel Option”). This option exists both with Must-Take Contracts and Dispatchable Contracts. Certain of the Contracts with Fuel Option provides that DWR can decide on a monthly basis whether to supply the gas and others provide that the decision be made annually when DWR reviews the Supplier’s proposed fuel plan.

The purpose of this Exhibit B is to describe the relationship which will exist between DWR and Utility and the specific responsibilities of each as they all relate to managing the natural gas provisions of the Contracts which include Fuel Options. Specifically, this Exhibit B will address responsibilities for the following activities: (i) determining types and lengths of gas contracts, (ii) nominating deliveries, (iii) contracting for gas transportation and storage, (iv) managing imbalances, (v) reviewing, authorizing and making payment of gas invoices and (vi) determining and implementing hedge strategies, as appropriate.

#### **I. Operating Relationship Between DWR and Utility**

While DWR will retain legal and financial responsibility for gas and related services, Utility shall, as a limited agent acting for and on the behalf of DWR, perform the administrative and operational activities, as further specified below, required to ensure adequate gas is supplied to Suppliers’ generating units, consistent with the tolling provisions included in the Contracts. The intent of this relationship is to provide Utility sufficient flexibility and authority to execute normal day-to-day activities associated with managing the fuel provisions of tolling Contracts and procurement of natural gas and related services without direct involvement by DWR but in a manner consistent with DWR’s general guidelines and Utility fuel plans which have been reviewed and pre-approved by DWR.

#### **II. Fuel Activities**

Consistent with the terms of the Contracts with Fuel Options, Utility shall have administrative and operational authority to act, as a limited agent, for and on behalf of DWR, for fuel supply related activities, as more specifically described below. [Criteria and Standards to be applicable for gas procurement from third-party suppliers – to come from DWR.]

[Execution of such activities shall conform to the following goals and guidelines whenever Utility has elected to supply gas to a Supplier under a Contract with Fuel Option.

1. Utility shall use reasonable commercial efforts to deliver gas in a reliable manner and consistent with gas requirements for producing scheduled energy.
2. Utility shall develop a portfolio of gas supply for DWR Contracts that contain Fuel Options and where Utility is to be the gas provider. Such portfolio should be diversified in terms of price mechanism, period of performance, and gas suppliers.
3. Utility shall develop a portfolio of supply which is cost-effective relative to the market.]

### **III. Review of Generator Prepared Fuel Plans**

In accordance with the terms of each of the Contracts with Fuel Options, Utility, acting for and on behalf of DWR, shall review each fuel plan prepared and submitted by the Supplier and determine whether to recommend (i) approval of the fuel plan and authorization for the Supplier to provide gas to its generating unit(s), or (ii) procurement and management of gas supplies to the generating unit(s) by Utility. Utility shall advise DWR on a timely basis of its recommendation regarding responsibility for supplying natural gas. DWR shall review Utility's recommendation and either approve or identify required changes. Once approved, Utility shall advise the Supplier in accordance with the time requirements included in the appropriate Contract with Fuel Option. In addition, for any fuel plans which have been implemented and are operative as of the Effective Date, and where DWR has previously elected to be responsible for gas supply, Utility may advise DWR that it would rather have Supplier supply the gas as of the Effective Date. DWR will coordinate with Utility and Supplier to revise such fuel plans, to the extent possible, prior to the Effective Date.

### **IV. Fuel Procurement Strategies**

Under the Contracts with Fuel Option, upon Utility's determination and DWR's approval that Utility will be responsible for supplying the natural gas, Utility shall, acting for and on the behalf of DWR, have administrative and operational responsibility for determining its gas procurement strategies, including but not limited to (i) types of contracts, (ii) length of contracts, (iii) pricing terms, (iv) use of storage, (v) types of gas transportation, (vi) delivery point(s), (vii) whether and how to obtain gas price forecasts, (viii) if and what risk management tools are to be used, and (ix) how to maintain current market intelligence. [What are the criteria if a third-party supplier is to be relied upon by the Utility.]

Utility shall consolidate these strategies and submit them to DWR as a "Gas Supply Plan" on a semi-annual basis. DWR shall review the Gas Supply Plan and provide its approval or requested changes. Once approved by DWR, Utility may act within that Gas Supply Plan without further DWR involvement, except as provided below.

### **V. Gas Purchasing**

Utility and DWR shall jointly determine a list of approved gas suppliers who can be used to supply gas under the Contracts with Fuel Options. Master agreements (GISB, etc) intended to cover normal day-to-day volumes will then be executed with such approved suppliers. While DWR will be the executing party, such agreements shall specifically authorize Utility to act for and on behalf of DWR in negotiating specific prices, quantities and delivery periods for specific purchases under such master agreements. If Utility determines it would be beneficial to enter into a firm gas supply agreement with a term greater than three months or with a total value exceeding \$10 million or such other amounts that the parties may mutually agree to, it shall negotiate such agreement(s) and submit them to DWR for advance approval and execution.

**VI. Gas Transportation**

Utility shall have responsibility for recommending to DWR which pipelines should transport gas if Utility is to the gas provider under a Contract with Fuel Option. Upon DWR approval or revision of such recommendation, Utility shall negotiate firm and/or interruptible agreements with such pipelines and submit them to DWR for approval and execution. While DWR will be the executing party, such agreements with pipelines shall specifically authorize Utility to act for and on behalf of DWR in nominating gas deliveries, making imbalance trades and managing gas volumes transported under such agreements. DWR and Utility shall mutually develop in writing and in advance of such negotiations any limits, including without limitation, any terms that may be required by DWR.

**VII. Gas Scheduling**

Utility shall have full administrative and operational responsibility for scheduling gas deliveries, whether to a specific generating plant or to storage for all gas contracts entered into by DWR or by Utility on DWR's behalf pursuant to this Exhibit B. This function includes use of interstate and intrastate gas pipeline provider websites, confirming via telephone, and all other activities required to move gas from the designated delivery point, as determined by the Utility, to its destination, as determined by the Utility.

**VIII. Storage Capacity, Injections and Withdrawals**

Utility shall have responsibility for recommending to DWR a plan for utilizing gas storage services, if Utility is to the gas provider under a Contract with Fuel Option. Upon DWR approval or revision of such recommendation, Utility shall negotiate firm and/or interruptible agreements with such storage service providers and submit them to DWR for approval and execution. While DWR will be the executing party, such agreements with storage service providers shall specifically authorize Utility to act for and on behalf of DWR in nominating gas injections and withdrawals under such agreements. DWR and Utility shall mutually develop in writing and in advance of such negotiations any limits, including without limitation, any terms that may be required by DWR

**IX. Managing Gas Delivery/Usage Imbalances**

For gas that it purchases and transports on behalf of DWR, Utility shall have full administrative and operational responsibility for monitoring and managing the daily status of gas usage vs. gas deliveries (i.e. gas imbalances). In addition, to the extent that gas transportation providers issue operational flow orders or require adjustments in scheduled gas deliveries due to system constraints, Utility shall be responsible for compliance with such orders. Utility shall also be responsible for any penalties imposed by gas transportation providers for imbalances caused by Utility, due to its failure to exercise prudent gas management practices.

**X. Invoice Review, Approval and Payment**

For natural gas, pipeline transportation and storage services it purchases in accordance with this Exhibit B, Utility shall have responsibility for receiving invoices from gas, transportation and storage suppliers, reviewing them for accuracy, approving/rejecting invoices for payment and forwarding to DWR for payment. Utility shall provide DWR sufficient documentation to verify payment of the invoices.

**XI. Forecasting**

Utility shall be responsible for all gas price, demand and supply forecasts which Utility believes are consistent with its gas supply responsibilities.

**XII. Risk Management**

Utility shall develop and advise DWR of plans for the hedging of DWR Fuel Supply. Final decisions relating to the use or non-use of physical and financial tools such as futures, options and swaps to hedge future gas price exposure shall be made by DWR.

**XIII. Market Intelligence**

Any and all efforts to obtain, analyze and utilize market intelligence for decision-making purposes shall be the responsibility of Utility.

**XIV. Payment of Gas Costs**

For natural gas, pipeline transportation and storage services that are purchased and provided by a Supplier under an approved Fuel Supply Plan, DWR shall pay such gas related costs as part of the invoice for Energy submitted by the Supplier. For natural gas, pipeline transportation and storage services provided under DWR contracts and administered by Utility on behalf of DWR, DWR shall pay invoices from suppliers after they have been reviewed and approved for payment by Utility.

**XV. Allocation of Existing DWR Gas Contracts**

DWR has entered into gas supply, transportation and storage contracts as provided in Attachment 1 to this Exhibit B that have expiration dates after the Effective Date of this Agreement. The administrative and operational control of

the contracts listed on Attachment 1 of this Exhibit B will become the responsibility of Utility. This shall include (i) scheduling gas transportation, (ii) confirming gas deliveries, (iii) nominating gas withdrawals from and injections into storage, if applicable, (iv) and reviewing and approving invoices for payment. When approved, invoices shall be transmitted to DWR for payment within 10 days of receipt of invoice from the gas supplier, gas storage or gas transportation provider.

#### **XVI. Financial Hedge Instruments**

If DWR has entered into any financial hedge transactions that will remain operable after the Effective Date of this Agreement, DWR shall retain full administrative and operational control over such transactions and Utility shall have no associated responsibility whatsoever. [Statement as to Utility's ability to enter into hedges on behalf, if any, - to be provided by DWR.]



## **EXHIBIT C**

### **SETTLEMENT PRINCIPLES FOR REMITTANCES AND SURPLUS REVENUES**

This Exhibit C delineates the method by which Utility will calculate revenues associated with surplus sales and retail customer deliveries, the payment of Contract and Interim Contract invoices, and the manner in which DWR will settle with fuel supplier and transporter.

This Exhibit C works in conjunction with the applicable Servicing Arrangement with Utility for purposes of determining the remittance amount. This Exhibit C provides the basis for the calculations of hourly retail revenues and hourly surplus sales due to DWR from Utility's customers and Utility respectively. In each case Utility will serve as DWR's billing and collection agent.

In accordance with the Contract Allocation Order, this Exhibit C provides that:

- Revenues will be allocated for both surplus sales and retail customer deliveries pro rata, based on dispatched quantities of energy.
- The principle of least cost economic dispatch is reinforced through these revenue allocation protocols, by allocating least cost resources to retail loads in priority to serving non-retail obligations or market sales.
- Surplus sales quantities will be calculated as total dispatched energy quantities from the aggregate Utility resource portfolio, less loads. Loads include retail load and existing Utility non-retail load.

The method and calculations herein, together with the applicable Servicing Arrangement, form a substantive component of the accounting protocols required to implement the Contract Allocation Order. This Exhibit should also be read in conjunction with Exhibit F ("Data Requirements"). The data requirements (in Exhibit F) are essential to the establishment of accountability and responsibility of Utility to DWR in carrying out its obligations under this Agreement.

As noted above, the Contract Allocation Order requires least cost economic dispatch. If in any hour dispatchable resources were to be dispatched to serve retail load prior to all zero cost resources being utilized, within a reasonable margin for estimation error<sup>1</sup>, the principle of least cost dispatch would be violated. Accordingly, this accounting protocol attributes all zero cost dispatched resources to retail loads, in priority to non-retail obligations or market sales.

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<sup>1</sup> For the purpose of determining the retail load share of regulatory must-run URG, Utility's ISO real time market energy purchase of up to 2% of the forecasted retail customer load owing to under-forecasting shall be deemed as additional dispatched quantity of regulatory must-run URG in order to accommodate reasonable load forecasting errors.

Attachment 1 to this Exhibit contains a schematic of the overall responsibilities for the performance of certain activities. Other Exhibits in this agreement address certain of the items contained therein in greater detail.

## **I. Calculation of DWR Revenues**

Utility shall calculate the Power Charges daily and DWR Surplus Energy Sales Revenues monthly in accordance with Sections A and B of this Exhibit C, respectively, and shall remit in accordance with each Utility's respective Servicing Arrangement.

The calculation of Power Charges and DWR Surplus Energy Sales Revenue shall be determined based on the least cost dispatch principles and pro rata sharing of revenues for each of the hourly surplus energy sales and the hourly retail customer load. DWR's share of revenue for the hourly surplus energy sales is the hourly DWR Surplus Energy Sales Revenue and DWR's share of revenue for the hourly retail customer load is the hourly Power Charge.

Consistent with the Contract Allocation Order, the Power Charges and DWR Surplus Energy Sales Revenues are based on dispatched quantities of Power and metered loads.

Consistent with the Contract Allocation Order, the Power Charges and DWR Surplus Energy Sales Revenues are based on dispatched quantities of Power and metered loads. To remit daily Power Charges and monthly DWR Surplus Energy Sales Revenues before the actual dispatched quantities of Power and metered loads become available, Utility shall estimate Power Charges and DWR Surplus Energy Sales Revenue in accordance with the formulas in Sections A and B of this Exhibit using estimated dispatched quantities of Power and estimated loads derived from best and most up to date information reasonably available to Utility at the time. Once actual data becomes available through the ISO final settlement statements, Utility shall calculate the appropriate "actual" remittance amounts and true up estimated remittances with DWR.

### **A. DWR Surplus Energy Sales Revenue Calculation**

DWR surplus energy sales revenue is based on its pro rata share of the hourly total surplus energy sales quantity (" $HTotSESQ_h$ "), which is the total dispatched quantity of Contracts and URG, in excess of the retail load, exchange and non-retail obligations<sup>2</sup> of Utility, expressed as follows.

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<sup>2</sup> Non-retail obligations shall include all non-retail obligations of Utility in effect before the Operating Agreement Effective Date and any forward sale delivery obligation for a period in excess of 30 days in effect after the Operating Agreement Effective Date without DWR's express approval.

$$HTotSESQ_h = HContracts_h + HURG_h - HRetailLoad_h$$

Where:

- $HRetailLoad_h$  is the hourly total retail customer load of Utility measured at the transmission voltage levels of the distribution transformers, which shall be the hourly total metered load of Utility in ISO settlement statements less total metered non-retail obligations of Utility,
- $HContracts_h$  is net hourly total dispatched quantity of Contracts defined as the hourly total dispatched quantity<sup>3</sup> of Contracts less ISO Instructed Energy and Ancillary Service sales from Contracts, if any, adjusted for transmission losses<sup>4</sup>, and
- $HURG_h$  is net hourly total dispatched quantity of utility retained generation (URG) defined as the hourly total dispatched quantity<sup>5</sup> of URG less any net exchange delivery<sup>6</sup>, non-retail obligations of Utility, ISO Instructed Energy and Ancillary Service sales of Utility, adjusted for transmission losses.

The surplus energy sales so defined include positive ISO Uninstructed Energy. Negative ISO Uninstructed Energy is Utility's residual net short purchase and hence included in the URG dispatched quantity, thereby increasing Utility's pro rata share.

The hourly DWR Surplus Energy Sales Quantity, (" $HDWRSESQ_h$ ") is the product of the hourly DWR Surplus Percentage (" $HDWRSurplusPercentage_h$ "), defined below in this section, and the hourly total surplus energy sales quantity (" $HTotSESQ_h$ ") defined above, i.e.,

$$HDWRSESQ_h = HDWRSurplusPercentage_h \times HTotSESQ_h$$

<sup>3</sup> The dispatched quantity of a Contract is the final schedule if the counterparty of the Contract is responsible for instructed and uninstructed deviations; else the dispatched quantity of the Contract is the hourly metered quantity of the Contract.

<sup>4</sup> Namely dispatched quantity at the delivery point of Contracts or generator terminal multiplied by the ISO determined generator meter multiplier (GMM) at the delivery point or generator terminal. In most cases transmission losses are the responsibility of the suppliers of the Contracts.

<sup>5</sup> The dispatched quantity of a URG resource is the hourly metered quantity

<sup>6</sup> Any exchange delivery in an hour reduces the dispatched quantity of URGs for meeting retail customer load and/or reduces surplus energy sales in the same hour by the quantity of the exchange delivery. Conversely any exchange receipt in an hour in return for exchange delivery in some other hours increases the dispatched quantity of URG for meeting retail customer load and/or increases surplus energy sales in the same hour by the quantity of the exchange receipt.

Correspondingly, the hourly DWR Surplus Energy Sales Revenue from Contracts shall be the product of the hourly DWR Surplus Percentage and the hourly total surplus energy sales revenue (“*HTotSESR<sub>h</sub>*”), calculated as follows.

$$HDWRSESR_h = HDWRSurplusPercentage_h \times HTotSESR_h$$

Where the hourly total surplus energy sales revenue is the aggregate of all revenues collected from surplus sales<sup>7</sup>.

*HDWRSurplusPercentage<sub>h</sub>* is defined as the portion of the net hourly total dispatched quantity of Contracts in excess of the retail load share of Must-Take Contracts relative to the portion of the net hourly combined total dispatched quantity of Contracts and URG in excess of the combined retail load share of Must-Take Contracts and regulatory must-run URG, all adjusted for transmission losses as appropriate. This is necessary to ensure that revenue allocation follows California Assembly Bill AB1X, which sets the primary purpose of Contracts as meeting retail customer load and the least-cost economic dispatch principle outlined in the Contract Allocation Order. *HDWRSurplusPercentage<sub>h</sub>* so defined is based on dispatched quantities. In mathematical terms,

$$HDWRSurplusPercentage_h = \frac{HContracts_h - HMTLoadShare_h}{HContracts_h + HURG_h - HMTLoadShare_h - HMRLoadShare_h}$$

Where *HMTLoadShare<sub>h</sub>* represents the hourly total retail load share of Must-Take Contracts and *HMRLoadShare<sub>h</sub>* represents the hourly total retail load share of regulatory must-run URG. These hourly load shares are determined based on dispatched quantities, according to the following rule:

- (a) If *HRetailLoad<sub>h</sub>* is greater than or equal to the sum of net hourly total dispatched quantities of Must-Take Contracts and regulatory must-run URG, then *HMTLoadShare<sub>h</sub>* and *HMRLoadShare<sub>h</sub>* are the net hourly total dispatched quantities of Must-Take Contracts and regulatory must-run URG, adjusted for transmission losses,

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<sup>7</sup> In certain hours, certain surplus sales may have to be made at a negative price.

respectively. In this scenario, all net hourly dispatched quantities of Must-Take Contracts and regulatory must-run URG serve the retail customer load.

- (b) If  $HRetailLoad_h$  is less than the sum of net hourly total dispatched quantity of Must-Take Contracts and regulatory must-run URG, then  $HMTLoadShare_h$  and  $HMRLoadShare_h$  are pro rata share of  $HRetailLoad_h$  between DWR and Utility based on the net hourly total dispatched quantities of Must-Take Contracts and regulatory must-run URG. In this scenario, the net hourly dispatched quantities of Must-Take Contracts and regulatory must-run URG in excess of their respective retail load shares are included in surplus energy sales.

Transmission costs (congestion and firm transmission capacity charges) and brokerage fees associated with sale of surplus energy shall be allocated among the Parties on a pro-rata basis consistent with the surplus sales allocation principles set forth in this Exhibit C.

## **B. Calculation of Power Charge**

Consistent with the Commission's Contract Allocation Order, the hourly DWR Power (" $HDWRPower_h$ ") is the difference between the net total dispatched quantity of Contracts and DWR Surplus Energy Sales Quantity, as follows.

$$HDWRPower_h = HContracts_h - HDWRSESQ_h$$

The DWR Power Charge is billed by each utility to customers in accordance with the terms of each applicable Servicing Arrangement, as the case may be. The Power Charge is billed kWhs served by DWR Power at the applicable CPUC approved DWR rate. The Power Charge is allocated based on the percentage of power supplied by DWR to Utility, "the Hourly Percentage Factor" or "the DWR Percentage", multiplied by the retail load of each customer. The Hourly Percentage Factor and DWR Percentage are calculated by determining the amount of DWR Power supplied to the Utility by DWR for the purpose of serving retail load as calculated in the formulas below. The Hourly Percentage Factor and DWR Percentage are determined by calculating the percentage of power supplied by DWR to Utility to serve retail load, "DWR Power" divided by the Utility's entire retail customer load, at the transmission voltage levels of the distribution transformers.

For implementing the daily Power Charge remittance process and true-up process in the applicable Servicing Arrangement, the following percentages are defined.

The Hourly Percentage Factor (“*HourlyPercentageFactor<sub>h</sub>*”) for settlement hour h is defined as follows.

$$HourlyPercentageFactor_h = \frac{HDWRPower_h}{H RetailLoad_h}$$

The DWR Percentage (“*DWRPercentage<sub>d</sub>*”) for settlement day d is defined as follows.

$$DWRPercentage_d = \frac{\sum_h HDWRPower_h}{\sum_h H RetailLoad_h}$$

Where the symbol,  $\sum_h$ , represents summation of quantities over all hours in the day.

### **C. Adjustments to the Dispatched Quantities Used in Sections A and B**

Notwithstanding the formulas in Sections A and B above, the dispatched quantities used in the revenue allocation calculation may need adjustment should DWR or Utility discover that the actual dispatched quantities materially deviate from the least-cost economic dispatch principle.

Utility shall on a weekly basis provide to DWR a list of Contracts that have not been dispatched during the prior week, accompanied by an explanation as to why the Contract(s) was not dispatched. Should DWR disagree with the reasonableness of Utility’s dispatch decisions or the adjustments to dispatched quantities, it may request further information or explanation. In addition to any other remedies available to DWR, it may submit the matter to the Commission for further consideration.

## **II. Bilateral Settlement**

Under the Contract Allocation Order DWR remains financially obligated for the Contracts. DWR will continue to pay suppliers and this requires DWR to apply appropriate procedures and controls to ensure that payments are made accurately and in a timely manner. Both for these purposes and for purposes of accruing revenue due, DWR will require hourly final schedule data. This information may also be required to address contract performance issues (such as availability and other items as discussed in Exhibit E) and to allow DWR to settle disputes in an appropriate manner.

DWR requires sufficient information to support payment requests so that it can meet the accountability requirements of the State Controller's Office and the State Auditor, and simultaneously comply with the applicable statutes concerning disbursement of public monies. For these reasons, Utility agreed otherwise, DWR will retain the ability and responsibility to calculate bilateral settlements with Contract counterparties and make the associated payments to suppliers, and Utility will provide the data as required in Exhibit F to allow it to perform these duties in a timely manner as set forth herein.

DWR shall continue to pay Contract costs directly to the suppliers upon validation of invoices.

### **III. Fuel Cost Verification and Settlement**

DWR settles with the fuel seller/transporter and pays the invoice. The following procedure will apply,

- A. Utility will provide report supporting its fuel schedule and procurement plan,
- B. Utility will provide fuel storage/transportation usage data to DWR,
- C. DWR will receive fuel consumption schedule from energy supplier,
- D. The fuel seller/transporter will provide the settlement statement and invoicing data to DWR,
- E. DWR will provide the fuel consumption schedule and settlement statement to Utility,
- F. Utility will validate consumption schedule and settlement statement and advise DWR of its accuracy,
- G. DWR will validate the settlement statements and invoices and make payments to fuel supplier.

Attachment 1 to Exhibit C  
DWR/IOU Functional Responsibility

	SCHEDULING	INVOICING	VERIFICATION OF SCHEDULE AND INVOICE	PAYMENT	AUDIT AND CONTRACT PERFORMANCE
<b>REAL TIME/ ANCILLARY SERVICES</b>	Transfer to IOU 1/1/03	Transfer to IOU 1/1/03	Transfer to IOU 1/1/03	Transfer to IOU 1/1/03	Transfer to IOU 1/1/03 (Data Required by DWR for Remittance Calculations)
<b>SHORT TERM PURCHASES</b>	Transfer to IOU 1/1/03	Transfer to IOU 1/1/03	Transfer to IOU 1/1/03	Transfer to IOU 1/1/03	Transfer to IOU 1/1/03 (Data Required by DWR for Remittance Calculations)
<b>BILATERAL DWR CONTRACTS AND INTERIM PROCUREMENT</b>	Transfer to IOU 1/1/03	Counterparty Submits to DWR	IOUs or <u>DWR*</u>	DWR	DWR
<b>SALES OF SURPLUS POWER</b>	Transfer to IOU 1/1/03	Transfer to IOU 1/1/03	Transfer to IOU 1/1/03	Transfer to IOU 1/1/03	Transfer to IOU 1/1/03 (Data Required by DWR for Remittance Calculations)
<b>FUEL PURCHASING</b>	Transfer to IOU 1/1/03	DWR	DWR	DWR	DWR

\* Initially DWR with transition to IOUs  
Work-in-Progress



**EXHIBIT D**  
**ISO SCHEDULING COORDINATOR CHARGES**

The financial obligation for ISO costs will be allocated to the Utility, unless otherwise extended under the existing letter agreement with DWR related to the ISO charges and any future Applicable Commission Orders. Unless specifically provided in Exhibit C hereto, all ISO costs attributable to load and resources shall be the responsibility of Utility.

**EXHIBIT E****CONTRACT MANAGEMENT AND ADMINISTRATION PROTOCOLS**

DWR will retain all contract management, administration and monitoring responsibilities for the Contracts, including due diligence, performance testing, contract performance assessment, formal correspondence and notifications with Suppliers, exercise of contract options, contract interpretation and dispute resolution, and financial reporting. In the event Utility and DWR agree in the future to transition the Due Diligence and Performance Test Monitoring functions set forth in this Exhibit E from DWR to the Utility, the Parties will first develop a mutually acceptable plan of performance, a transition schedule, and a transition plan for transfer of such functions from the DWR to the Utility. Upon agreement of the Parties to an acceptable plan and completion of the transition period, the agreed upon functions will transfer from DWR to the Utility (“the Transition Date”).

**I. Due-Diligence**

The Due Diligence function assesses the progress of permitting, construction and performance capability of new generating facilities under to the Contracts. Due Diligence includes (i) monitoring activities associated with the development, construction, and performance of new generating facilities; (ii) identification and tracking of key projects milestones including permitting, equipment procurement, construction, commissioning, and performance testing; (iii) coordination with permitting agencies and the Suppliers, review of project documents, physical inspections, and witnessing of acceptance tests, (iv) verification that the new facilities can perform in a manner that is consistent with the obligations under the appropriate Contract and (v) review and approval of commercial operation dates and documentation.

**II. Performance Test Monitoring****A. Annual Performance Tests**

Annual Performance Tests verify ongoing compliance with the Contracts and establish plants capacities and efficiencies that are used to calculate contract payments, either for capacity or energy. Annual Performance Test responsibilities generally consist of (i) verification of testing procedures, (ii) witness of performance tests, (iii) review of test results and test reports for compliance with Contract terms and conditions, and (iv) identification of contract non-compliance for dispute resolution with the Supplier. Prior to the Transition Date, the Utility will cooperate and assist DWR with scheduling of upcoming Annual Performance Tests, and the Utility may have its staff witness such testing.

B. Scheduled Performance Tests

Prior to the Transition Date, on occasion, DWR may request that Utility schedule a peaking or dispatchable generating facility for testing (to assure that such generation facility is available according to the terms of the contract between such generation facility and DWR). The utility will cooperate and shall coordinate with the DWR on a mutually acceptable date for performance of the test. On the date agreed upon, the Utility shall schedule the specified facility or unit for operation to test the availability, reliability, and performance of the scheduled unit.

C. Test Procedures and Protocols

Prior to January 1, 2003, Utility shall meet with DWR staff to review, discuss, and verify test procedures and protocols developed by DWR.

**III. Contract Performance Assessments**

DWR shall continue to perform an after-the-fact review (“Performance Assessment”) of each Contract on a periodic basis. The purpose of the Performance Assessment is to assess, analyze, and document the overall performance of each contract Supplier, assure that the Supplier is satisfying the terms and conditions of their respective contract(s), and identify potential issues, disputes, and other matters that may require corrective action by either Utility or DWR as part of contract administration.

**IV. Other Administrative Matters**

A. Correspondence with Suppliers

Utility and DWR agree to copy each other on all written correspondence and written notifications sent to or received from a Supplier of an Allocated Contract or Interim Contract related to the activities described in this Exhibit E. The Parties agree to provide additional information as requested related to verification and support of the activities described in this Exhibit E.

B. Reports

Results of the activities described in this Exhibit E will be documented by DWR in written reports (“Reports”) and shall be discussed periodically between DWR and the Utility. Such Reports may include, but are not limited to, summary of test results, status of projects, recommendations for operational changes, procedural changes, dispute resolution, and results of Performance Assessments.

Such Reports, documentation, or other material developed by either Party shall be shared and reviewed with the other Party on a timely basis.

C. Cooperation

Utility agrees to cooperate, assist, and support DWR staff, as required, in data collection, analysis, and Report preparation which includes providing DWR staff or a designated agent access to all data necessary to complete reports.

## EXHIBIT F

### DWR DATA REQUIREMENTS FROM UTILITY

To effectively manage its resources and financial responsibilities, DWR requires standard, reliable and timely information from Utility. This information will be used to support bilateral contract settlements, validation of ISO settlements, allocation, validation and payment of fuel procurement provided by Utility, revenue requirement management and various ongoing reporting.

Utility shall provide to DWR the information listed in the table below. The table below contains a brief description of the information to be provided by Utility, the frequency for which Utility shall provide such information to DWR, and the effective date for when Utility shall provide such information to DWR.

Contract/Trade				
Requirement	Description	Freq	Effective	Delivery Method
Surplus Energy Sales Request	Utility's request to DWR for approval to enter into a forward surplus energy sales for a term longer than one week utilizing Allocated Contract energy	For monthly or 1/4'y sales < \$10M - 4 hours All others 30 days	All forward surplus sales effective after 1/1/2003	Email/Fax - Standard Form TBD
Surplus Energy Sales	Contract/Deal information relating to the forward sale of DWR surplus energy. This would include but is not limited to Counterparty, Term (Start/End Date), Hourly Contract Volumes, Hourly Price, Location, any fee information, etc.	When executed	All surplus forward sales effective after 1/1/2003	Email/Fax - Standard Form TBD

Schedule				
Requirement	Description	Freq	Effective	Delivery Method
Final Schedule Volumes	The complete Utility energy and ancillary services portfolio of detailed hourly schedule volumes and pricing information for the day by contract/deal. The volumes represent the final scheduled volumes for the day including any adjustments made in real-time. File should include, but is not limited to: SC identifier, Counterparty, contract, schedule type/identifier, date, volume scheduled by hour, price per hour.  (Note: this not the ISO HA Final Schedule Template)	T+1 (Daily)	1/2/2003	Secure Electronic – Format TBD

HA Final Schedule Volumes	Same as above but based on HA Final Schedule volumes by contract/deal by hour.  (Note: this not the ISO HA Final Template)	T+1 (Daily)	1/2/2003	Secure Electronic – Format TBD
HA Preferred Schedule Volumes	Same as above but based on HA Preferred Schedule Volumes by contract/deal by hour and limited to DWR Long term contracts.  (Note: this not the ISO HA Preferred Schedule Template)	T+1 (Daily)	1/2/2003	Secure Electronic – Format TBD
DA Final Schedule Volumes	Same as above but based on DA Final Schedule Volumes by contract/deal by hour and limited to DWR Long term contracts.  (Note: this not the ISO DA Final Schedule Template)	T (Daily)	1/1/2003	Secure Electronic – Format TBD
DA Adjusted Schedule Volume	Same as above but based on DA Adjust Volumes by contract/deal by hour and limited to DWR Long term contracts..  (Note: this not the ISO DA Adjusted Schedule Template)	T (Daily)	1/1/2003	Secure Electronic – Format TBD
DA Revised Preferred Schedule Volumes	Same as above but based on DA Revised Preferred Schedule Volumes by contract/deal by hour and limited to DWR Long term contracts.  (Note: this not the ISO DA Revised Preferred Schedule Template)	T (Daily)	1/1/2003	Secure Electronic – Format TBD
DA Preferred Schedule Volumes	Same as above but based on DA Preferred Schedule Volumes by contract/deal by hour and limited to DWR Long term contracts.  (Note: this not the ISO DA Preferred Schedule Template)	T (Daily)	1/1/2003	Secure Electronic – Format TBD
ISO HA Schedule Template	A consolidate 24 hour ISO HA schedule template file consisting of final and preferred schedules for long term contracts as available for download from the ISO Schedule Workspace	T+1	1/1/2003	ISO Template Format
ISO DASchedule Template	A consolidated ISO DA schedule template file consisting of final, adjusted, revised and preferred schedules for long term contracts as available for download from the ISO Schedule Workspace.	T+1	1/1/2003	ISO Template Format

[The following table assumes that the IOUs will be responsible for all ISO charges – additional data requirements to be incorporated if DWR has continuing responsibilities]

<b>ISO Settlement</b>
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Requirement	Description	Freq	Effective	Delivery Method
Utility Preliminary Settlement Statement and Supporting Files	The complete Utility preliminary settlement statement and supporting files in original Utility template format. This information also required for remittance calculation purposes.	T + 38 business days	Ongoing	Secure Electronic - ISO Template
Utility Final Settlement Statement and Supporting Files	The complete Utility final settlement statement and supporting files in Utility original template format. This information also required for remittance calculation purposes.	T + 45 business days	Ongoing	Secure Electronic - ISO Template

The following table assumes DWR will retain legal and financial responsibility for gas and related services while the utility will perform administrative and operational responsibilities as outline in Exhibit B.

Fuel Costs				
Requirement	Description	Freq	Effective	Delivery Method
Generator fuel plan proposal	Proposal and supporting analysis on whether or not to accept or reject of generator fuel plan.	Based on individual contracts	Jan-03	TBD
Utility Fuel Procurement Plan	Utility will provide a bi-annual fuel procurement plan for utility supplied fuel.	Bi-Annual	Jan-03	TBD
Tolling agreement gas report	Monthly report on each tolling agreement that includes, but is not limited to: tolling contract identifier, who provided the gas (generator/utility) and daily quantity of gas supplied.	Monthly	Feb-03	Electronic - Format TBD
Approved Monthly Gas Invoice	Suppliers monthly invoice and supporting documentation for fuel procurement relating to DWR tolling agreements, reviewed and approved by Utility for payment by DWR to the supplier.	Monthly	Feb-03	Electronic – Format TBD
Gas Transportation Contract Information	Details relating to the Utility negotiated firm and/or interruptible transportation agreements for DWR review and authorization.	When executed	All contracts effective after 1/1/2003	Email/Fax - Standard Form TBD
Gas Storage Contract Information	Details relating to the Utility negotiated firm and/or interruptible storage agreements for DWR review and authorization	When executed	All contracts effective after 1/1/2003	Email/Fax - Standard Form TBD
Approved Monthly gas transportation invoices	Suppliers monthly invoice and supporting documentation for natural gas transportation costs relating to DWR tolling agreements, reviewed and approved by utility for payment by DWR to the supplier.	Monthly	Feb-03	Electronic – Format TBD

Approved Monthly gas storage invoices	Supplier's monthly invoice and supporting documentation for storage relating to DWR tolling agreements, reviewed and approved by utility for payment by DWR to the supplier.	Monthly	Feb-03	Electronic – Format TBD
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The following table anticipates certain decisions that will be made in the future. It will be revised once those decisions are final. However, it will always provide that DWR requires sufficient information to independently calculate remittances due.

<b>Revenue Remittance</b>				
<b>Requirement</b>	<b>Description</b>	<b>Freq</b>	<b>Effective</b>	<b>Delivery Method</b>
Forecasted Retail Load by hour	Day after utility forecasted load information by hour.	T + 1	1/1/2003	TBD
Hourly Distribution Loss Factor	Utility DLF % by hour	When changes required	1/1/2003	TBD
Estimated DWR remittance %	Utility estimated remittance percentage.	When changes required	1/1/2003	TBD
Energy Sales billed (kWh)	Daily kWh billed by Utility to end users	Daily	ongoing	Standard DWR Form/File
Energy Sales billed (Direct Access)	Daily kWh billed by ESP's to end users.	Daily	ongoing	Standard DWR Form/File
Energy Sales Remitted (\$)	Daily dollar amount being remitted to DWR by Utility for the cost of DWR Contracts energy collected from customers including identification of dates billed.	Daily	ongoing	Standard DWR Form/File
DWR Power Charge billed to Customer	Daily dollar amount of DWR Power Charge being billed to customer including identification of dates billed.	Daily	ongoing	Standard DWR Form/File
DWR Power Charge Remitted to DWR	Daily dollar amount being remitted by Utility to DWR for the DWR Power Charge collected from customers including identification of dates billed.	Daily	ongoing	Standard DWR Form/File
Bonds fees billed to customer	Daily dollar amount of DWR Bond Recovery Fee being billed to customer including identification of dates billed	Daily	Effective Mid November	Standard DWR Form/File
Bond fees remitted to DWR	Daily dollar amount being remitted by Utility to DWR for the DWR Bond Recovery Fee collected from customers including identification of dates billed.	Daily	Effective Mid November	Standard DWR Form/File
Energy Sales Remitted (Direct Access)	Daily dollar amount being remitted to DWR by ESP providers.	TBD	[CPUC Direct Access Decision]	TBD
Exit Fees billed to customer	[CPUC Direct Access Decision]	TBD	[CPUC Direct Access Decision]	TBD



Exit Fees Remitted to DWR	[CPUC Direct Access Decision]	TBD	[CPUC Direct Access Decision]	TBD
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For planning purposes, Utility shall provide DWR the following information.

<b>Resource Information</b>				
<b>Requirement</b>	<b>Description</b>	<b>Freq</b>	<b>Effective</b>	<b>Delivery Method</b>
Load and Resource Assessment Studies	Copies of Utilities annual and quarter load and resource assessment studies as provided to the PUC.	Annually and quarterly	Jan-03	TBD
Update Description of Resources	Updated description of resources as set out in Exhibit A. Utilities will also provide timely updates on significant resource changes as outline in Exhibit A.	Annually or when significant changes	Jan 1, 04	TBD
Unit Commitment Studies	As provided to the PUC.	Weekly	Jan-03	TBD
Variable cost by unit	Variable operating cost information for all units with Utility's portfolio.	Annually	Jan-03	TBD
Derate by Unit	Derate information for all units within Utility's portfolio. (Requirement subject to finalization of settlement and remittance agreements. )	T+ 1	Jan-03	TBD
Unit Capacity	Unit capacity (PMAX) for all units within the Utilities portfolio as reflected in the CAISO Master file	As Revised	1/1/2003	TBD
DWR Non-Dispatched Resources Report	Report of resources that were economic to run, but which were not dispatched.	Weekly	1/1/2003	TBD
DWR Resource Unavailability Form	Utility notification to DWR for resources within an Allocated Contract becoming unavailable, or schedule to become unavailable.	As outlined in operating agreement	1/1/2003	Standard DWR Form - Email/Fax

Upon the reasonable request of DWR, Utility will provide to DWR any information in respect of Utility that is applicable to the rights and obligations of the Parties under this Agreement or any material information that is reasonably necessary to monitor the performance of Utility under this Agreement. Upon the reasonable request of Utility, DWR will provide to Utility any information in respect of DWR that is applicable to the rights and obligations of the Parties under this Agreement or any material information that is reasonably necessary for Utility to operationally administer Contracts under this Agreement.

For the information identified above, or any additional information identified through the term of this Agreement, standard submission formats will be used or developed by DWR for use by each of the investor-owned utilities, including Utility. In the cases where the information requirements result in a large volume of data (e.g., schedule information), DWR will use or develop standard detailed file definitions for use by all of the investor-owned utilities, including Utility. Data will be submitted to DWR by Utility through a secure electronic communication medium, unless other medium is reasonably requested by DWR.

As a result of the relative short implementation timeframes, it is anticipated an interim delivery protocol (e.g., comma delimited file via email, compact diskettes) will be utilized until the final data transmission media are in place. DWR shall work jointly with Utility to ensure the required data is available by January 1, 2003.

## **EXHIBIT G**

### **GENERAL TERMS AND CONDITIONS**

For purposes of this Exhibit G, Utility shall be deemed to be the “Contractor” hereunder. To the extent that Contractor's compliance with any of the terms of this Exhibit G results in additional costs and expenses for Contractor (except to the extent the terms of this Exhibit G merely require compliance with laws or regulations which apply to the Contractor irrespective of the existence of this Agreement), Contractor will invoice DWR for such additional costs and expenses, and DWR shall pay such invoices as Additional Charges, in the manner contemplated by Section 7 of the Servicing Arrangement.

1. **RECYCLING CERTIFICATION:** The Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of recycled content, both post consumer waste and secondary waste as defined in the Public Contract Code, Sections 12161 and 12200, in materials, goods, or supplies offered or products used in the performance of this Agreement, regardless of whether the product meets the required recycled product percentage as defined in the Public Contract Code, Sections 12161 and 12200. Contractor may certify that the product contains zero recycled content. (PCC 10233, 10308.5, 10354)

2. **NON-DISCRIMINATION CLAUSE:** During the performance of this Agreement, Contractor and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave. Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

Contractor shall include the nondiscrimination and compliance provisions of this clause in all contracts with subcontractors to perform work under the Agreement.

3. **CERTIFICATION CLAUSES:** The CONTRACTOR CERTIFICATION CLAUSES attached hereto are hereby incorporated by reference and made a part of this Agreement.

4. CHILD SUPPORT COMPLIANCE ACT: “For any Agreement in excess of \$100,000, the contractor acknowledges that:

a. the contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and

b. the contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.”

5. UNION ORGANIZING: Contractor by signing this Agreement hereby acknowledges the applicability of Government Code Section 16645 through Section 16649 to this Agreement.

a. Contractor will not assist, promote or deter union organizing by employees performing work on a state service contract, including a public works contract.

b. No state funds received under this agreement will be used to assist, promote or deter union organizing.

c. Contractor will not, for any business conducted under this agreement, use any state property to hold meetings with employees or supervisors, if the purpose of such meetings is to assist, promote or deter union organizing, unless the state property is equally available to the general public for holding meetings.

d. If Contractor incurs costs, or makes expenditures to assist, promote or deter union organizing, Contractor will maintain records sufficient to show that no reimbursement from state funds has been sought for these costs, and that Contractor shall provide those records to the Attorney General upon request.

**CERTIFICATION**

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY, or EXECUTE THIS CERTIFICATION, in the manner required by Applicable Law, certifying thereby that I am duly authorized to legally bind the entity identified below to the clause(s) listed in the following numbered paragraphs 1-5. This certification is made under the laws of the State of California.

**Utility**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Federal ID Number \_\_\_\_\_

Executed in the County of \_\_\_\_\_

## **CONTRACTOR CERTIFICATION CLAUSES**

1. **STATEMENT OF COMPLIANCE:** Contractor has, unless exempted, complied with the nondiscrimination program requirements. (GC 12990 (a-f) and CCR, Title 2, Section 8103) .

2. **DRUG-FREE WORKPLACE REQUIREMENTS:** Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 and will provide a drug-free workplace by taking the following actions:

- a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.
- b. Establish a Drug-Free Awareness Program to inform employees about:
  - 1) the dangers of drug abuse in the workplace;
  - 2) the person's or organization's policy of maintaining a drug-free workplace;
  - 3) any available counseling, rehabilitation and employee assistance programs; and,
  - 4) penalties that may be imposed upon employees for drug abuse violations.
- c. Every employee who works on the proposed Agreement will:
  - 1) receive a copy of the company's drug-free workplace policy statement; and,
  - 2) agree to abide by the terms of the company's statement as a condition of employment.

Failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both and Contractor may be ineligible for award of any future State agreements if the department determines that any of the following has occurred: (1) the Contractor has made false certification, or violated the certification by failing to carry out the requirements as noted above. (GC 8350 et seq.)

3. **NATIONAL LABOR RELATIONS BOARD CERTIFICATION:** Contractor certifies that no more than one (1) final unappealable finding of contempt of court by a Federal court has been issued against Contractor within the immediately preceding two-year period because of Contractor's failure to comply with an order of a

Federal court which orders Contractor to comply with an order of the National Labor Relations Board. (PCC 10296)

4. RECYCLED MATERIALS: Contractor hereby certifies under penalty of perjury that at least 0% of the materials, goods and supplies offered or products used in the performance of this Agreement meet or exceed the minimum percentage of recycled materials as defined in Sections 12161 and 12200 of the Public Contract Code.

5. UNION ACTIVITIES: In compliance with California Government Code Sections 16645 – 16649, Contractor hereby certifies that no request for reimbursement, or payment under this agreement, will be made for costs incurred to assist, promote or deter union organizing.

## **DOING BUSINESS WITH THE STATE OF CALIFORNIA**

The following laws apply to persons or entities doing business with the State of California.

1. **CONFLICT OF INTEREST:** Contractor needs to be aware of the following provisions regarding current or former state employees. If Contractor has any questions on the status of any person rendering services or involved with the Agreement, the awarding agency must be contacted immediately for clarification.

Current State Employees (PCC 10410):

- 1) No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.
- 2) No officer or employee shall contract on his or her own behalf as an independent contractor with any state agency to provide goods or services.

Former State Employees (PCC 10411):

- 1) For the two-year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.
- 2) For the twelve-month period from the date he or she left state employment, no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the 12-month period prior to his or her leaving state service.

If Contractor violates any provisions of above paragraphs, such action by Contractor shall render this Agreement void. (PCC 10420)

Members of boards and commissions are exempt from this section if they do not receive payment other than payment of each meeting of the board or commission, payment for preparatory time and payment for per diem. (PCC 10430 (e))

2. **LABOR CODE/WORKERS' COMPENSATION:** Contractor needs to be aware of the provisions which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions, and Contractor affirms to comply with such provisions before commencing the performance of the work of this Agreement. (Labor Code Section 3700)



3. AMERICANS WITH DISABILITIES ACT: Contractor assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 U.S.C. 12101 et seq.)

4. CONTRACTOR NAME CHANGE: An amendment is required to change the Contractor's name as listed on this Agreement. Upon receipt of legal documentation of the name change the State will process the amendment. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.

5. AIR OR WATER POLLUTION VIOLATION: Under the State laws, the Contractor shall not be: (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) subject to cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of provisions of federal law relating to air or water pollution.

6. PAYEE DATA RECORD FORM STD. 204: All contractors that are not another state agency or other government entity must complete this form.